



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

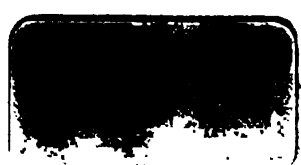
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





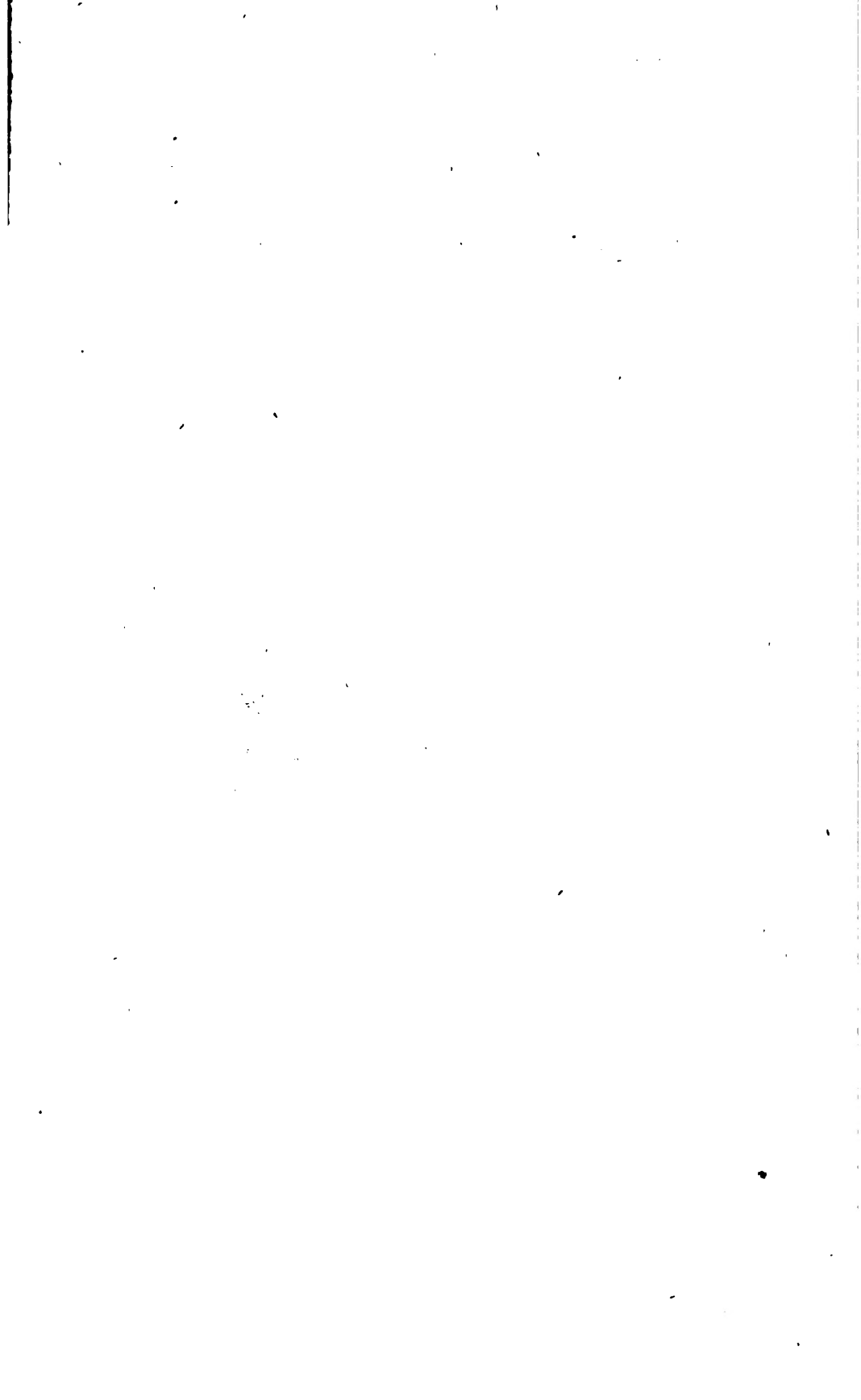


English-Spanish Dictionary

JSN  
MLJ  
MO  
v. 3)









THE

*John Watling Junr*  
*10 July 1847*

# LEGAL OBSERVER,

OR

JOURNAL OF JURISPRUDENCE.

---

PUBLISHED WEEKLY.

---

NOVEMBER 1845, TO APRIL, 1846,

INCLUSIVE.

---

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

---

HORAT.

VOL. XXXI.

LONDON:

PUBLISHED FOR THE PROPRIETORS

BY EDMUND SPETTIGUE,

LAW BOOKSELLER AND PUBLISHER, 67, CHANCERY LANE;

SOLD BY SHERWOOD AND CO., PATERNOSTER ROW;

ADAM AND CHARLES BLACK, EDINBURGH;

AND HODGES AND SMITH, DUBLIN.

---

1846.

50.489  
LELAND STANFORD, JR. UNIVERSITY  
LAW DEPARTMENT.

LONDON:

PRINTED BY G. S. PALMER, SAVOY STREET, STRAND.

# CONTENTS OF VOLUME XXXI

## RECENT DECISIONS IN THE SUPERIOR COURTS, Reported by Barristers of the several Courts, viz.:

### In the Courts of Equity:

- E. Vmsittart Neale, Esq., of Lincoln's Inn.  
Samuel Miller, Esq., of Gray's Inn.  
J. H. Cooke, Esq., of Gray's Inn.  
J. F. Villiers, Esq., of Gray's Inn.

### In the Courts of Common Law:

- John Hamerton, Esq., of Gray's Inn.  
A. J. P. Lutwyche, Esq., of the Middle Temple.  
A. P. Hurlstone, Esq., of the Middle Temple.  
Edward Lawes, Esq., of the Middle Temple.

## ANALYTICAL DIGEST OF CASES REPORTED IN ALL COURTS:

### I. Courts of Equity:

1. Principles of Equity, 209, 523
2. Pleadings in Equity, 244, 552
3. Practice in Equity, 244, 554
4. Evidence, 574
5. Costs, 547, 575

### II. Ecclesiastical Courts, 285

### III. Appeals:

1. English and Irish, 287
2. Scotch and Colonial, 289
3. Ecclesiastical and Admiralty, 291

### IV. Patent Cases, 292

### V. Common Law Courts:

1. Construction of Statutes, 333
2. Grounds of Action and Principles, 358
3. Pleadings, 362
4. Evidence, 406
5. Practice, 411
6. Bankruptcy, 423
7. Arbitration, 435
8. Costs, 436
9. Law of Attorneys, 426

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW:

- Lunatics Regulation Act, 94, 106  
Stamp Act of last Session, 27  
Commons Inclosure Act, 41, 63

## LAW REFORM AND SUGGESTED IMPROVEMENTS IN PRACTICE:

- State of Judicial Business in House of Lords,  
121, 349  
State of Business in Superior Courts, 24, 225  
Removal of Poor Bill, 112, 424  
Charitable Trusts' Bill, 421, 469, 550, 568  
General Registry Bill, 458  
Government Poor Law Bill, 493  
Mode of Conducting Elections, 404  
New Short Form Conveyancing Bill, 517, 565  
Character and Conduct of the Profession, 30

Origin and Progress of Equity Jurisdiction,  
66, 105

Arrangement of Common Law Business, 80,  
516

Practice of Retainers, 110

Law of Bankruptcy and Insolvency, 148

Legal Prospects of the Session, 205

Suspension of Law Reform, 277

Fees to Clerks of the Peace, 631

General Registry of Deeds, 254, 397

Debtors' and Creditors' Arrangement Act, 373

Coroners' Expenses, 500

Removal of the Courts, Plan of Proposed Site,  
5, 491

Small Debt Practitioners, 51

Real Property Legislation, 173

Ejectment Practice, 165

Holidays at the Law Offices, 198

Accountant-General's Office, 356

Conveyancing Reform, 225, 565

Jurisdiction in Insolvency Cases, 467

Professional Remuneration, 565

## NEW BILLS IN PARLIAMENT:

Duties of Constables, Justices, and Clerks of the  
Peace, 811

Bequests for Charitable Trusts, 253

Game Laws, 334

Administration of Criminal Justice, 277

Friendly Societies, 402

Roman Catholic Relief, 402

Metropolis Buildings, 426

Charitable Trusts, 452, 543

Prosecutors, Witnesses, and Jurors, 472

Removal of the Poor, 473, 534

County Elections, 505

Law of Highways, 547

Bankruptcy and Insolvency, 569

## PARLIAMENTARY REPORTS AND RETURNS:

Criminal Law, 129

New Places created and Appointments made,  
132

Court of Chancery, 276, 496

New Trials and Appeals in Criminal Cases, 301

Regulations of the Inns of Court, 480

Inclosure of Commons, 305

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW:

See last page of each No. during the Session.

## NOTES ON NEW STATUTES:

Construction of Insolvent Debtors' Act, 403

Compulsory Acts of Bankruptcy, Construction  
of Bond under 1 & 2 Vict. c. 110, s. 3, 541

Operation of the Stamp Laws, 398

Operation of the 7th section of the Limitation Act, and retrospective, 310  
Court Fees, when payable under 1 & 2 W. 4, c. 56, 88  
Jurisdiction in Bankruptcy as to Costs—Power of Commitment, 234

DECISIONS UNDER THE SMALL DEBTS ACT, 4, 51, 73, 111

NEW RULES, ORDERS AND REGULATIONS:

Drainage Estate Act, 427  
Easter Vacation, 491  
Arrangement of Business at the Judges' Chambers, 420  
Chancery Time Table, 49

NOTES ON EQUITY:

Solicitor and Client—Purchase—Fraud—Concealment—Lapse of Time no Defence, 8  
Corporation Frauds—Corrective and Remedial Jurisdiction of the Court of Chancery, 23  
Bank Note, how far involving a several liability—Practice, 23  
Equitable Mortgage—Ward of Court, 44  
Undue influence from Spiritual Ascendancy, 87  
Information—Relators, 232  
Policy of Assurance—Assignment—Notice—Order and Disposition, 278  
Municipal Corporation—Equitable Jurisdiction, 309  
Lunatics permitted to reside out of Jurisdiction, 30  
Annuity—Judicial Conflict—Chancellors Plunkett and Sugden, 329  
Champerty, 422  
Creditors Suit—Contribution, 567  
Sale of Expectancies—Inadequacy of Price, 447  
Insurance without an Insurable Interest, 494  
Executor's Assent—Its effects when unconditional, 518  
Assignment of Legacy, 518  
When the Court will itself decide, or direct an Issue, 519  
Doad of Settlement, *ex facie* voluntary, upheld by extrinsic evidence, 543

POINTS IN COMMON LAW:

Licence to enter Land—when revocable, 9  
Right of Party in Criminal Custody to Copies of Depositions, 11  
Arrest of Privileged Persons by Sheriff, not Actionable, 25  
An Attorney of two Courts, may be sued in either, 26  
Error does not lie upon an Interpleader Issue, 46  
What are "Parliamentary Taxes" in a Lease or Agreement, 47  
Copyright in Books published Abroad, 104  
Unstamped Bill of Exchange, when receivable in Evidence, 125  
Admissibility of Bankrupt to prove facts connected with his Bankruptcy, 126  
Alteration of Bills of Exchange and other instruments, 143  
When the Property in Chattels passes, 187  
Time for delivery of Paper Books, 208  
When one Partner being an attorney may bind his Co-partner, 283  
Operation of the Stamp Acts on Receipts, 337  
Rule for New Trial on payment of Costs, discharged if Costs not paid, 330  
Defacing Hackney Coach Licence, 423  
Interest accruing after Bankruptcy, 424

What constitutes an Imprisonment, 470  
Indorsees of Lading cannot sue in his own name, 544  
Who may be sued as Acceptor, 545  
Damage on Replevin Bond, 545

PROPERTY LAWYER:

Operation of Mortgages and Bill of Sale on after acquired property, 207  
Sale by Auction—Puffing, 127  
Secret Partnership with a Pawnbroker illegal, 376  
Stamp on Feoffment, 111  
Tenant quitting for want of Repair without Notice, 450  
Contingent Remainders, 112  
Land Tax—Manorial Rents, 268

NOTICES OF NEW BOOKS:

Kennedy's Code of Chancery Practice, 12  
Grant's Chancery Practice, 67  
Stephen's Commentaries on the Laws of England, 144  
Miller's Chancery Orders, 168  
Rouse's Practical Man, 194  
Walford's Laws of the Customs, 376  
Shelford's Law of Railways, 400  
Crabb's Law of Real Property, 425  
Davidson's Concise Precedents in Conveyancing, 456  
Browell's Real Property Statutes, 474  
Bigg's Collection of Special Railway Acts, 502  
Terrell's Railway Liabilities, 504  
Lord Campbell's Lives of the Chancellors, 146, 267  
Fitzpatrick's Railway Rights and Liabilities, 172, 231  
Turnley's Vatican, 193  
A'Beckett's Comic Blackstones, 196  
Tamlyn's Law of Evidence, 571  
Stewart's Conveyancing Practice, 565

LAW LECTURES:

Assignment of Satisfied Terms Act, 32, 81, 101, 122  
Short Form Conveyancing and Leases Acts, 162  
Amended Real Property Act, 183, 255, 279, 305

LAW AND PRACTICE OF ATTORNEYS:

Trial of Facts by Affidavit—Attorney's remedy for Costs, 147  
Professional Responsibility—Ignorance—Negligence, 173  
Action on Note in discharge of Costs, 424  
Case of H. H. Pyke, 91  
Case of W. H. King, 90  
Arrangement of Papers and keeping Accounts, 134  
Repeal of Certificate Duty, 485  
Striking Off the Roll for Non-registration of Public Company, 135  
Share-Brokers preparing Transfer, 135  
Annual Certificates, 110  
Registration, 155  
Liability to serve in Militia, 393

CHIEF CLERKS OF MASTERS IN CHANCERY:

Case of Whiting, 372.

EXAMINATION OF ARTICLED CLERKS:

Questions at, 74, 312  
Information relating to, 15, 56, 228, 250, 262, 491, 536  
Prizes at, 379, 431  
Candidates Passed, 239, 407

# CONTENTS.

<b>BARRISTERS' CLERKS GRATUITIES,</b> 159, 175, 198
<b>LAW OF RAILWAY COMPANIES :</b>
Equality of Charge as Carriers, 61
Parliamentary Practice regarding Bills, 161, 181
Law relating to, 166
Legislation, 329
Purchase and Sale of Shares, 351
Liability of Provisional Committees, 52
Joint-Stock Liabilities, 363
Sale of Railway Scrip, 300
Railway Liabilities, 490, 491
<b>SCOTTISH MERCANTILE LAW AND PRACTICE :</b>
Bills of Exchange, 431, 460, 478
Prescription or Limitation in Bills of Exchange, 499
Bankruptcy and Insolvency, 519, 545
<b>LAW OF MARRIAGE AND DIVORCE :</b>
Duke of Sussex's case—Decree of the Council of Trent, 48, 76
Marriage of Protestants at Rome, 109
<b>PEERS OF THE REALM AND TEMPORAL LORDS,</b> 49
<b>INTERNATIONAL LAW :</b>
Baron de Bode's case, 189, 236
Brazilian Pirates, 134
<b>REMARKABLE FOREIGN TRIALS :</b>
Martel's case, 486
<b>PROFESSIONAL SOCIETIES :</b>
Inns of Court, 15, 153, 253, 264
Revival of Reading at the Inns of Court, 372, 445, 405, 496

<b>Law Amendment, 29</b>
Incorporated Law Society, 169
Provincial Law Societies' Association, 238
Manchester Law Association, 266
Dublin Law Institute, 508
<b>LAW PROMOTIONS, APPOINTMENTS, AND RETIREMENTS,</b> 91, 112, 155, 169, 263, 328, 380, 394, 467
<b>LEGAL OBITUARY,</b> 156, 174, 300, 394, 564
<b>LEGAL BIOGRAPHY :</b>
Mr. Justice Story, 260
<b>AN INVITATION TO WESTMINSTER HALL,</b> 14
<b>CHANGE AND RESTORATION OF MINISTERS AND LAW OFFICERS,</b> 141, 174
<b>CIRCUITS, SITTINGS, CAUSE LISTS, &amp;c. :</b>
Circuits of the Judges, &c. 324, 432
List of Sheriffs, Under-Sheriffs, &c., 380
Sittings, 17, 97, 117, 203, 224, 226, 321, 324, 318, 443, 515, 537, 562
Cause Lists, 17, 37, 118, 225, 226, 250, 252, 345, 539, 562
Barristers Called, 197, 332
Masters Extra in Chancery, 98, 178, 296, 395, 492, 580
Attorneys to be Admitted, 52, 53, 71, 241, 283, 314
Renewal of Certificates, 32, 52, 241, 552
Dissolution of Professional Partnerships, 99, 178, 297, 395, 492, 580
Bankruptcies Superseded, 99, 178
Bankrupts, 99, 119, 178, 297
Bankruptcy — Dividends Declared, 40, 139, 203, 371, 395

It may be proper to mention in this place, that the *Analytical Digest* of all reported cases in all the courts, which has been separately published every quarter, during the last 14 years, is now incorporated in the *Legal Observer*, without any increase in the amount of the subscription. This improvement took place in January last, and each half-yearly volume will, in future, contain two Parts or Series of the digest.

The Table of *Contents* will afford a ready reference to the several leading heads, arranged

in the departments of:—Common Law, Equity, Bankruptcy, and Criminal Law;—followed by the Ecclesiastical and Admiralty cases, and appeals to the House of Lords and Privy Council.

These are subdivided into—1. Construction of Statutes. 2. Principles. 3. Evidence. 4. Pleadings, 5. Practice. The Law of Attornies and Costs will be also distinctly classified.

The Table of *Titles* in the Digest will show where each particular point of law or practice may be found, with the cases cited in the Judgment of the court.



## TABLE OF REPORTS DIGESTED.

---

<i>Court.</i>	<i>Reporters.</i>	<i>Abbreviations.</i>	<i>Vol. and Part.</i>
House of Lords . . .	Clark and Fennelly . . .	Clark & F. . . .	Vol. 12, Part 1.]
Privy Council . . .	Moore . . . . .	Moore . . . . .	Vol. 4, Part 1.
Ecclesiastical . . .	Robertson . . . . .	Rob. . . . .	Vol. 1, Part 1.
Master of the Rolls . .	Beavan . . . . .	Bea. . . . .	Vol. 7, Part 2.
Vice-Chancellor of Eng- land . . . . .	{ Simons . . . . .	{ Sim. . . . .	Vol. 13, Part 2.
Vice-Chancellor Knight Bruce . . . . .			
Vice-Chancellor Knight Bruce . . . . .	{ Collyer . . . . .	{ Coll. . . . .	Vol. 2, Part 1.
Vice-Chancellor Wigram Hare . . . . .			
Queen's Bench . . .	Adolphus and Ellis, N. S. Q. B. . . . .		Vol. 5, Part 4.
Common Pleas . . .	{ Manning and Granger - M. & G. . . . .	{ . . . . .	{ Vol. 6, Part 3, and 4 Vol. 7, Part 2. }
	Scott, N. S. . . . .	C. B. . . . .	Vol. 1, Part 2.
	Scott, W. S. . . . .	Scott, N. S. . . . .	Vol. 8, Part 5.
Exchequer of Pleas . .	Meenan and Walshby . . . . .	M. & W. . . . .	Vol. 14, Part 1.
Practice Court, Queen's Bench, Com. Pleas, and Exchequer . . .	{ Dowling & Lowndes . . . . .	{ D. & L. . . . .	Vol. 2, Part 5.
All the Courts . . .	Legal Observer . . . . .	L. O. . . . .	Vols. 30 & 31.

# TABLE OF TITLES IN THE ANALYTICAL DIGEST.

- Abatement, 242, 575  
 Action, (notice of), 222  
     *See* Railway Act  
 Administration suit, 575  
 Affidavit, 534  
     *See* Statute of Limitations  
 Ambiguity, 382  
 Amendment of Record, 324  
 Annuity, 523  
     *See* Power of Appointment  
 Appearance before Master, 575  
 Apportionment, 524  
 Arbitration, 435  
 Arrest, 411  
 Assets, (Administration of), 222  
     *And see* Will, 1  
 Attorney, 456  
     *And see* Admission; Agency; Lien; Mal-  
         practice; Partner; Signed Will; Taxation;  
         Undertaking  
 Averment of Tender, 384  
 Award, 435  
     *And see* Inclosure Act  
 Bail, 384  
 Banking Company, 358  
 Bankruptcy Act, 433  
 Bargain and Sale, 358  
 Barter, 358  
 Bill of Exchange, 338, 384, 408  
 Borough Election, 333  
 Canal Act, 333  
 Carrier, 333  
     *See* Railway  
 Certiorari, 411  
     *See* Highways; Time  
 Champerty, 524  
 Charterparty, 524  
 Christian Names, 385  
 Clerks to Justices, 333  
 Club, 709  
     *See* Partnership  
 Commission to Examine Witnesses, 574  
 Consideration, 385  
 Conspiracy, 359  
 Contingent Remainder, 524  
 Contract, 359  
 Copyholds, 524  
     *See* Mining Rights  
 Costs, (Common Law) 436  
 Costs, (Equity) 247, 575  
     *And see* Copyholds; Highway; Non ob-  
         stante veredicto; Security for; Taxation;  
         Tender  
 Crown, 408  
     *See* Documents of Deceased Persons  
 Court Baron, 333  
 Covenant, 209, 360, 385  
 Coverture, 386  
 Creditors' suit, 575  
 Customs, 367  
     *And see* Trespass  
 Debtor and Creditor, 524  
 Deed, 360  
 Demurrer, 243, 386  
 Description of Defendant, 414  
     *See* Process  
 Detinet, 386  
 Devastavit, 361  
     *See* Executors  
 Devise, 361  
     *And see* Tenant by Curtesy  
 Discontinuance, 411  
 Discovery, 575  
 Dismissal, 244, 575  
 Distringas, 412  
 Documents of Deceased Parties, 409  
 Ejectment, 386, 412  
 Estoppel, 433  
 Evidence, 408, 574  
     *And see* Banking Company; Libel; Ship;  
         Sheriff  
 Examination of Witnesses, 409  
 Exchange, 525  
 Execution, 334, 412  
     *And see* Husband and Wife; Partner  
 Executor and Administrator, 209, 361, 409, 525  
     *See* Trustee; Priority; Will; Creditors  
 Fines and Recoveries Abolition, 412  
 Fine, 525  
 Foreclosure, 575  
 Form, 525  
 Forgery, 411  
     *And see* Trover  
 Foreign Law, 574  
 Guarantee, 61  
 Heir at Law, 525  
     *And see* Fine  
 Highway Act, 334  
 Husband and Wife, 210, 412  
     *And see* Limitations, (Statute of)  
 Inclosure Act, 334  
 Indemnity, 525  
     *And see* Executor  
 Indictment, 386  
 Injunction, 526, 575  
     *And see* Costs; Joint-Stock Company; Lien;  
         Ship; Tenant for Life  
 Insolvent Debtor, 334, 386  
 Insurance, 526  
 Inspection of Documents, 410  
 Interest, 210, 386  
 Irregularity, 412  
 Joint-Stock Company, 210, 335  
     *And see* Partnership  
 Jointure, 526  
 Judicial Notice, 413  
 Judgment, 443  
     *And see* Outstanding Term  
 Jurisdiction, 434  
     *And see* Insolvent  
 Landlord and Tenant, 365, 382  
 Lease, 362, 586

TABLE OF CASES IN DIGEST.

- See* Copyholds; Covenant; Money had and received; Ejectment; Specific Performance; Usury  
 Legacy, 210, 362, 526  
*See* Will  
 Libel, 362  
 Lien, 213, 410  
*See* Usury; Vendor and Purchaser; Debtor and Creditor  
 Limitations, (Statute of,) 213, 335, 527  
 And *see* Outstanding Term; Perpetuity; Tenant for Life  
  
 Maintenance, 532  
 And *see* Will  
 Malicious Prosecution, 362  
 Mandamus, 335  
 And *see* Clerks to Justices  
 Married Woman, 413  
*See* Fines and Recoveries  
 Master and Servant, 363, 387  
 Messenger, 433  
 Merger, 216  
 And *see* Tenant for Life  
 Misdirection, 410  
*See* Insurance; Libel; Malicious Prosecution  
 Modus, 216  
*See* Tithes  
 Money had and received, 364  
 Mortgage, 220, 524, 526  
 And *see* Vendor and Purchaser; Husband and Wife; Champerty; Insurance  
  
 Newspaper, 411  
 New Trial, 414  
 Nonjoinder, 387  
 Not Guilty, 387  
 Nonsuit, 388  
  
 Order and Disposition, 213, 434  
 Opinion, 362  
*See* Libel  
 Outstanding Term, 219  
 Overseers, 335  
  
 Partnership, 214, 434  
 And *see* Covenant; Probate Duty; Joint-Stock Company; Ship; Banking Company  
 Patent, 364, 388, 413  
 Paving Act, 336  
 Payment, 388  
 Personal Estate, 212  
*See* Legacy  
 Perpetuity, 527  
 Petitioning Creditors' Debt, 435  
 Pleading, (Common Law,) 382  
 Pleading, (Equity,) 242  
 Poor Law, 337  
 Portions, 528  
 Power of Appointment, 215, 528  
*See* Exchange; Perpetuity; Will  
 Practice, (Equity) 244, 554  
 Practice, (Common Law,) 411  
 Priority of Charge, 528  
 Prisoner, 413  
 Prohibition, 414  
 Probate Duty, 215  
 Process, 414  
 Production of Documents, 574  
  
 Railway Company, 338  
 Receiver, 557  
 Registration of Voters, 339  
  
 Remainder, 216  
*See* Tenant for Life  
 Remoteness, 215  
*See* Power of Appointment  
 Rent, 362  
 And *see* Landlord and Tenant  
 Replication, 388, 414  
 Reversion, 529  
 Reward, 364  
 Right to begin, 361  
  
 Sale, 219, 364  
*See* Vendor and Purchaser; Money had and received  
 Security for Costs, 575  
 Service, 246, 414  
 Set-Off, 363, 411, 575  
*See* Debtor and Creditor  
 Sheriff, 341, 365, 389  
*See* Landlord and Tenant  
 Ship, 365, 529  
 Slander, 414  
*See* Prohibition  
 Solicitor, 531  
*See* Vendor and Purchaser  
 Specific Performance, 529  
 Stamp, 362  
*See* Lease  
 Staying Execution, 412  
*See* Execution  
 Stoppage in Transitu, 367  
 Sureties, 584  
*See* Bail  
 Survivorship, 532  
*See* Will; Husband and Wife  
 Sunday, 414  
  
 Taxation, 247, 576  
 Tenancy, 411  
 Tenant for Life, 215, 530  
 Tenant by Curtesy, 529  
 Tenant in Tail, 527  
*See* Perpetuity  
 Tender, 389  
 Tithe Commutation Act, 341  
 Tithes, 216, 530  
 Timber, 215  
*See* Tenant for Life  
 Title, 526  
*See* Injunction  
 Trespass, 367, 389  
 Trover, 390, 411  
 Trustee, 217, 530  
 And *see* Executors; Husband and Wife; Perpetuity; Priority; Vendor and Purchaser  
 Usury, 530  
  
 Variance, 415  
 Vendor and Purchaser, 219, 531  
 And *see* Trustee  
 Venire de novo, 359  
*See* Conspiracy  
 Voluntary Deed, 531  
 Warrant of Attorney, 415  
  
 Way, (right of) 309  
 Wharfinger, 367  
*See* Stoppage in transitu  
 Will, 220, 532  
 And *see* Legacy  
 Witness, 247  
 Writ of Right, 415  
 Writ of Trial, 415  
 And *see* New Trial.

**The Legal Observer,**  
OR,  
**JOURNAL OF JURISPRUDENCE.**

SATURDAY, NOVEMBER 1, 1845.

—“Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.”

HORAT.

**PROJECTED ALTERATIONS IN  
THE LAW.**

It may be appropriate, in commencing a new volume, to consider the several subjects which it will probably be our duty to bring under discussion during the ensuing session. And although parliament is not expected to assemble until the usual time, there are already some “notes of warlike preparation,” indicating many projected incursions for the removal of our old legal landmarks, which we shall proceed briefly to notice. It is true, however, that some of them may be designed only to cure defects in modern legislation, and not to overthrow the ancient. These it will be our business carefully to watch.

I. We have received information that very strenuous efforts will be made at the commencement of the session for the amendment of the Law of Bankruptcy and Insolvency. A committee of merchants and traders was appointed, at a public meeting held at the London Tavern in May last, at which Mr. Masterman, M. P., presided, and which we noticed at the time. Their plan, in its principal features, is this:—

1. That the Court of Bankruptcy, upon the non-appearance of a trader debtor to a summons, or upon his not proving that he has a good defence, shall appoint some person to proceed to the debtor's premises, and prevent the removal of the property, unless satisfactorily informed of its destination; and to require an account of all monies received and paid during the time of his continuing in possession, until the opening of a fiat.

2. That the Court of Bankruptcy suspend or withdraw its protection from arrest from the bankrupt or insolvent debtor at any time, at its discretion, particularly if the bankrupt or insol-

vent shall fail to satisfy the court that his bankruptcy or insolvency has arisen from unavoidable misfortunes, and not from fraud, wilful misconduct, extravagance, gambling, or improper speculation; or if he shall have been guilty of concealment or fraudulent transfer of property, destruction or falsification of his books, &c., or of any offence now punishable by indictment.

3. That the assignees be deemed judgment creditors of the bankrupt or insolvent for the whole amount admitted by him to be due to his creditors; and the like as to individual creditors, for the amount of their debts proved; the court to grant certificates thereof, which, upon the protection being withdrawn, will enable the assignees or creditors to take the debtor in execution.

4. That the pension and half-pay of bankrupts be made available for the creditors.

5. That mortgages and bills of sale of goods and chattels given as security, be registered within 21 days after execution, otherwise to be void as against the assignees.\*

6. That the Court of Bankruptcy, upon the decease of a trader, and in case of no legal personal representative being appointed within a month afterwards, shall send a person to remain in charge of the effects, until an executor or administrator shall be appointed; and in default for one year, the court shall appoint an official assignee of the estate, and administer the effects as if a fiat had been issued.

Such is the substance of the alterations suggested by this commercial Association, and which have been embodied in a bill brought in by Mr. Masterman and Mr. Hawes. Seeing the mischievous effect of several recent enactments on the interests of trade and commerce, we do not wonder that the merchants of London should at

\* A similar registration is now required of warrants of attorney and cognovits, when judgment is not entered up within 21 days.

length bestir themselves. Our readers will readily form their own opinion of the propriety and expediency of adopting these recommendations.<sup>b</sup> It will be seen that their main and proper object is, to procure larger powers over the property of debtors than hitherto existed. The tide for a long time has been running in favour of "the poor debtors," and against the interests of the defrauded creditors. It seems now turning in a better direction. The power of arrest having been taken from the creditor, he justly seeks to possess, in return, every possible means of obtaining the debtor's property, and where his conduct has been culpable or fraudulent, to punish him by imprisonment.

Whilst the merchants are thus coming forward to protect their own just rights and interests, the lawyers have not been inattentive to the evils of the existing system. Amongst them, we have particularly to notice the labours of Mr. Serjeant Manning, who has prepared an elaborate and learned report, addressed to the Lord Chancellor, in which he reviews the history and present state of the laws of bankruptcy and insolvency, as well in this as other countries. He thus states the *principle* on which the laws should be framed:—

1. "To place the creditor in a situation as near to that in which he would be entitled to stand according to the terms of the original contract, as the altered circumstances of the debtor will allow.

2. "To relieve the insolvent from all inconvenience and suffering not necessary for the purpose either of enforcing payment to the extent of the insolvent's real ability, or of discouraging the imprudence and repressing the fraud and crime in which insolvency and bankruptcy so often originate."

The learned Serjeant then submits to the Lord Chancellor, as the first measure for consideration, a *consolidation of jurisdiction* in all matters connected with insolvency, whether of a commercial or non-commercial character. He says—

"The object of a sound legislation in both cases being the protection of the creditor, and subordinately thereto, the relief of the debtor, there appears to be no reason for the continuance of distinct and sometimes conflicting jurisdictions in respect of the two classes of insolvents."

He then proposes a new court of record, to be called "The Court of Insolvency for England and Wales," or "The Court of Insolvency and of Matters of Account;"

<sup>b</sup> See the bill, 30, L. O. 460.

and he submits to his lordship that this court should have jurisdiction in cases of real or apparent inability on the part of debtors to fulfil their engagements; such debtors coming within any of the following classes, viz.:—

1. Habitual traders, or such as are within the provisions of the present bankrupt laws.

2. Persons who, though not habitual traders, are indebted in respect of commercial contracts, as on bills of exchange, &c.

3. Persons indebted to traders under certain limitations.

4. Judgment debtors.

5. Depositories of the money or effects of others.

6. Conventiary debtors, or persons having obtained letters of license, composition or inspection deeds, &c.

It is then proposed, by the aid of the judges, (consisting of a chief and three puisne judges,) with sub-commissioners and registrars, to remedy the inconvenient extent of the present districts, or to increase the number of districts, appointing one commissioner to make a monthly circuit, and the other to remain stationed in a large central town.

The next proposal relates to letters of license, composition and trust deeds, &c., under which arrangements the learned Serjeant enters into very lengthened details. He then proceeds to compulsory and voluntary declarations of insolvency, and the measures requisite for rendering available the present and future acquired property of the debtor. In the general view we are now taking, it is unnecessary to consider these details. To them and other subjects discussed in this "Proposal for the Amendment of the Law of Bankruptcy and Insolvency," we shall return in due season.

II. We have next to call attention to the renewed project of a *General Registry* of all deeds relating to property, freehold or leasehold. A bill for carrying this object into effect was brought in by Lord Campbell on the 26th May last, and will doubtless be introduced again in the early part of the ensuing session. Our older readers will recollect how this important measure was battled in the early volumes of the *Legal Observer*, not only when it was first introduced in the year 1830, but on all occasions whenever it made its appearance.

The question peculiarly affects all that class of persons who require temporary loans, which have hitherto been effected by a deposit of title deeds, or by a mortgage, which, not being registered, does



not expose the transaction to a curious or ill-disposed rival, or a litigious opponent.

The frauds committed for want of registration, according to the evidence which was given before the Real Property Commissioners, appear to be not one in a thousand. Supposing that some further endeavours should be made to provide against these rare instances of deceit which escape the vigilance of the lender's solicitor, we have then to consider—whether a law which should give priority to all registered incumbrances, (despite all other notice,) would not occasion as many frauds as it will prevent. Money might still be lent on the faith of a deposit of deeds, in ignorance or disregard of the law, and on the reasonable supposition that no one would make an advance upon a bare mortgage, without a delivery of the title deeds,—and in all but rare instances no doubt such delivery would take place; and then would come the various questions of constructive notice, unless it be intended absolutely to abolish them.

Besides the consideration of the grounds and *principle* of the measure, we must look at its *practicability*. Is the *place* of registration to be in the metropolis, or some principal city or town of each county? Must the profession in the country be driven to town on every occasion to search the registry, or must one and all be compelled to travel from one county to another, wherever the property may be situate? Then there are no small difficulties in the *mode* of registration; the description of small estates; the imperfection of indexes; and the responsibility of searches!

It will be urged, that there is now a material difference in the position of the question, compared with its former state. We are aware that the alterations which have been made in the law of real property by some recent statutes, lead some persons (but without, we think, sufficient reason) to conceive that the time has arrived when further changes should be effected, and amongst others, the establishment of a general registry.

This is one of the evils which accompany all changes in the law. They are, as we have seen of late, prepared and passed with imperfect knowledge and without sufficient consideration, and require either to be repealed or amended, or new measures taken to provide against the mischiefs consequent upon the change. Thus, it is now said, that having gone so far, we must proceed farther. We cannot, how-

ever, admit the force of this position. Rather let us amend the blunders which have been committed, and retrace our steps, than, persisting in error, deviate still more from the right course.

III. Then comes the important subject of *Local Courts*. It can scarcely happen, that the hasty and ill-considered clauses added to the Small Debts Act of the last session, will be deemed a sufficient settlement of this long mooted question. Unless those enactments are repealed, or essentially altered, there must be some general measure to place the newly enlarged courts upon a rational footing. If there are to be two systems of administering justice in regard to debts,—one above and the other below 20*l.*,—the law and practice in the local and inferior courts must be framed upon an intelligible and uniform plan. Those who live in the country have the means of accurately knowing the state of the law and practice in the courts at Westminster. Why should not those who are compelled to resort to the provincial districts have the same advantage? As the matter stands at present, each petty tribunal—whether court of conscience or request, county court, or manor or borough court, when enlarged in its jurisdiction of amount and district,—will be regulated by its present system of proceeding; so that the suitors therein will have no uniform course of proceeding to guide them.

We scarcely expect that the voice of the lawyers will be listened to; but the merchants and wholesale traders must be enabled to recover their debts in the various separate districts, without the difficulty and inconvenience of sending their agents and witnesses to distant places. Where the debtor resides more than twenty miles from his creditor, the latter should have the right of suing in the superior courts. In fact, there should be a concurrent jurisdiction in regard to all sums above 10*l.* (if not above 5*l.*) to sue in the superior courts. The judges, indeed, under the act, in its present state, will have to decide whether this is not the true construction of the intention of the legislature. By one of the clauses, 8 & 9 Vict. c. 127, s. 21, a defendant may remove the action if the sum exceed 10*l.*; and it must be inferred that the plaintiff is equally entitled to have the choice of the court to which he thinks proper to resort. If the act be not altered, this question will no doubt soon be raised.

Then it seems that no professional assistance is to be allowed. It is at present entirely unknown whether the sick, the aged and infirm, and women, and others totally inexperienced in business, will not be obliged either to abandon their just claims, or personally to act as their own advocates, — opposed, perhaps, to artful persons, long-practised in deceit, with whom it will be difficult to contend. This state of things must surely be amended, or justice to the poor man will become a mockery.

IV. Of the ten bills of Lord Brougham, which were laid on the table of the House of Lords at the latter end of May last, five were passed, namely, the Short-Form Conveyancing Act, the Short-Form Leases Act, the Outstanding Terms Act, the Small Debts Act, and the Documentary Evidence Act. The five remaining bills, which were deferred, are the following :—

1. The *Civil Actions* Bill, enabling the plaintiff or defendant in an action to be examined as a witness, provided a month's previous notice be given.

2. The *Declaratory Suits* Bill, enabling parties to examine witnesses and have their rights declared, where future litigation is apprehended.

3. The *Law of Marriage* Amendment, requiring three weeks' residence in Scotland before marriage, and twelve months' residence before divorce.

4. Independence of Members of Parliament, under which there would be no privilege against arrest for non-payment of debts.

5. Administration of Criminal Justice, practically establishing provincial courts on the principle of the Central Criminal Court, to which offenders may be sent from neighbouring counties.

These bills no doubt will be revived, and perhaps from the same prolific source the number increased, in the ensuing session. It will be our duty to consider and discuss them, so soon as they make their re-appearance, either in the same or any other shape.

V. At the close of the last session, numerous measures, besides these five of Lord Brougham, were postponed. The following are the subjects to which they relate :—

The Ecclesiastical Courts.  
Charitable Trusts.  
Debtor and Creditor.<sup>b</sup>  
Divorce, (Privy Council.)  
Courts of Common Law Process.

<sup>b</sup> Both Lord Brougham and Lord Cottenham had very long bills on this subject.

Actions of Debt Limitation.  
Death by Accidents Compensation.  
Clerks of the Peace and Justices' Clerks.  
Deodands Abolition.  
Chattel Interests Assignment.  
Elective Franchise Extension.

For all these alterations, bills were brought in and printed, and they will be found in the pages of our last volume; to which may be added, the proposal, of which notice has been given by Mr. Ewart, totally to abolish the punishment of death.

Amongst the bills which, in our humble judgment, ought to have been passed in the last session, were three bills intended to authorise the service of common law process abroad upon persons indebted to creditors in this country or in Ireland or Scotland. We trust the bills will have a better fate next session. We hope the same of the bills to abolish deodands, and give compensation to the families of persons killed by the negligence of others, — such as railroad companies.

VI. Our readers are aware of the various steps taken to promote the important object of removing the courts of law from Westminster to the vicinity of the inns of court. This subject we have reserved for a separate article, to which we beg leave to refer.

It will be observed, from this long catalogue, that there are abundant materials to engage attention for the next six months. We trust that such of our readers as are interested in the various subjects comprehended in this our opening address, will, from time to time, aid us with their hints and suggestions, in order that we may the better execute that good part in the common cause which it is our duty to perform.

## DECISIONS UNDER THE SMALL DEBTS ACT.

THE absence of anything like uniformity in the practice, as well as the decisions, under the stat. 8 and 9 Vict. c. 127, already begins to be felt as a serious inconvenience, and tends, in many instances, to defeat its provisions.

The commissioners of the Court of Bankruptcy, from their station and professional experience, are naturally looked to, as the persons most competent to administer this law, and the numerous judges of inferior courts, with whom they divide the responsibility, would probably look to their decisions—when well

considered—if not as binding authorities, at least as useful guides. We understand, however, that no meeting of the commissioners has yet taken place to consider the provisions of the act; and under these circumstances it is not to be wondered at, if the decisions of individual commissioners should be occasionally contradictory, as well as unsatisfactory. In some few instances orders have been made for the committal of parties who have failed to appear after personal service of a summons; but as no forms of orders under the act have been framed or settled authoritatively, a great difficulty is thrown upon the suitor, who is told that he must draw up his own order of committal! The form adopted in one instance we give below,<sup>a</sup> not recommending it as a model, but conceiving that in the absence of any printed form it may afford some assistance.

The only case that has recently reached us deserving of notice is the following:—

In the matter of *Wilson v. Hart* before Mr. Commissioner Shepherd,<sup>b</sup> an application was made for a summons on the part of a defendant,

<sup>a</sup> *Order of Commitment for not appearing to Summons.*

Court of Bankruptcy, London.

To Y. Z. (the Messenger or Officer,  
and

To the keeper of the prison of, &c.

Whereas A. B., of , now duly summoned to attend here this day to answer such questions as might be put to him touching the not having paid to C. D., of , the sum of £ for his debt, and £ for his costs recovered by a certain judgment (or order) of the court of ; and the said A. B., although duly called, has not attended as required by the summons served upon him, and has not alleged a sufficient or any excuse for not attending. Wherefore I, the undersigned commissioner, do hereby order that the said A. B. stand committed to the custody of the keeper of the county gaol of for the space of days, and I do further order the said Y. Z. to take the said A. B. and him safely convey to the prison of the county of , situate in , and there to deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper of the said prison, to receive the said A. B., of , into your custody in the same prison, and him safely to keep for the space of forty days from the time of his commitment, unless he shall in the mean time be discharged out of custody by leave of me, or any other commissioner, or of a judge of the Court of Bankruptcy. Given under my hand this day of .

L. M., a commissioner.

<sup>b</sup> Tuesday 28th October, 1845.

who had obtained a judgment after verdict for 12*l.* odd, being the amount of his costs. The learned commissioner, after considering the language of the first section of the statute, expressed a decided opinion that the act did not apply to a case of this nature. The words of the act were, "If any person shall be indebted to any other in a sum not exceeding 20*l.* besides costs of suit, by force of any judgment," &c. Here the judgment was wholly for costs, and there was no debt for any sum *ultra* the costs. An order for costs was provided for, but the case of a judgment for costs only did not appear to be in the contemplation of the legislature. The commissioner, therefore, refused to grant a summons.

## REMOVAL OF THE COURTS FROM WESTMINSTER.

EVIDENCE OF WITNESSES, AND PLAN OF THE PROPOSED SITE AND ITS VICINITY.

It seems highly probable that the removal of the ill-constructed and insufficient courts from their present inconvenient situation, at the extremity of Westminster, for which we have long and earnestly contended, will at no distant period be carried into effect. We noticed in our last volume the proceedings which were taken last session for promoting this object, and particularly the meeting of the select committee of the House of Commons, formerly obtained by Sir Thomas Wilde, then the Solicitor-General, and renewed by Mr. Charles Buller. The select committee reported the evidence of the witnesses whose attendance before them we noticed at the time; and the report has just been printed, with the plans of Mr. Barry, one of which shows the site occupied by the present Houses of Parliament, and the other the proposed new site and its neighbourhood. We shall here endeavour to condense the evidence on all the main points into as brief a compass as possible.

Mr. Barry's evidence shows very strikingly the inconvenience of the present courts, and the necessity of new ones, more in number, and more commodious; and the impossibility of re-constructing the present courts at Westminster, so as to provide a sufficient extent of building. He also proves that there is no site in juxtaposition with Westminster Hall for the erection of new courts; and he states the purposes for which the present site might be appropriated, in connection with the Houses of Parliament. The removal of the courts would enable a material improvement to be effected

in the new palace, by a grand public entrance at the north-east corner of Palace Yard, which would be inclosed by a quadrangle.

He then describes the proposed site lying between the Strand on the south, Carey-street on the north, Chancery-lane on the east, and Clements Inn and New Inn on the west. The clearance of the lanes and alleys within that area he points out as of vast advantage to the neighbourhood. The purchase of this site he estimates at £675,000. He would occupy the centre of the square with the new courts, widen the Strand and part of Fleet-street to one hundred feet; Carey-street to sixty feet; and grant building leases for chambers on the east and west sides of the courts, the ground-rents of which would defray nearly one half the price of the whole ground. Then the rest of the present offices of all the courts, which would be brought under the roof of the new courts, would be available to a large extent in further reduction of the purchase.

He states the proposed style of architecture of the new building to be that of the middle ages, with its principal front to the Strand and Fleet-street. The former design for Lincoln's-inn-fields was of Grecian architecture, the object being to keep the building at a moderate elevation. The proposed edifice will be much more lofty.

Mr. Cadogan, the surveyor, confirms, from his practical knowledge, the estimates of Mr. Barry as to the expense of the new site, and the deductions to be made on account of the present offices. He then describes the character of the neighbourhood where the courts are proposed to be erected as still worse than formerly, deficient in drainage, much crowded, and most unwholesome. And he considers it would be a gain to the respectability and health of that great part of the town, if the houses were swept away and new buildings erected.

Mr. Lambert Jones, the chairman of the committee for City Improvements, described the direction of the new street which was intended to be formed in the City from St. Paul's Churchyard in a middle course between Ludgate-hill and Snow-hill, across Faringdon-street to Fetter-lane.\* He also stated that there would be no strong objection on the part of the City to the removal of Temple Bar, provided boundary gates were placed in its stead.

Mr. Parkinson, the chief clerk to the Accountant-General of the Court of Chancery, stated the insufficient and inconvenient condition of the offices in that important department of the business of the court,—that the former fire-proof rooms were obliged to be used for the additional registrars of the court; that the books relating to the large funds in court were not secured from fire; that the money in court

when the offices were built in 1775, was six millions, and had now increased to sixty millions; that the annual amount received and paid last year was nineteen millions; that the business had largely increased, there being now ten registrars where formerly there were only two, and twenty-six clerks instead of four. He also stated that there was an impossibility of increasing the accommodation in the present offices.

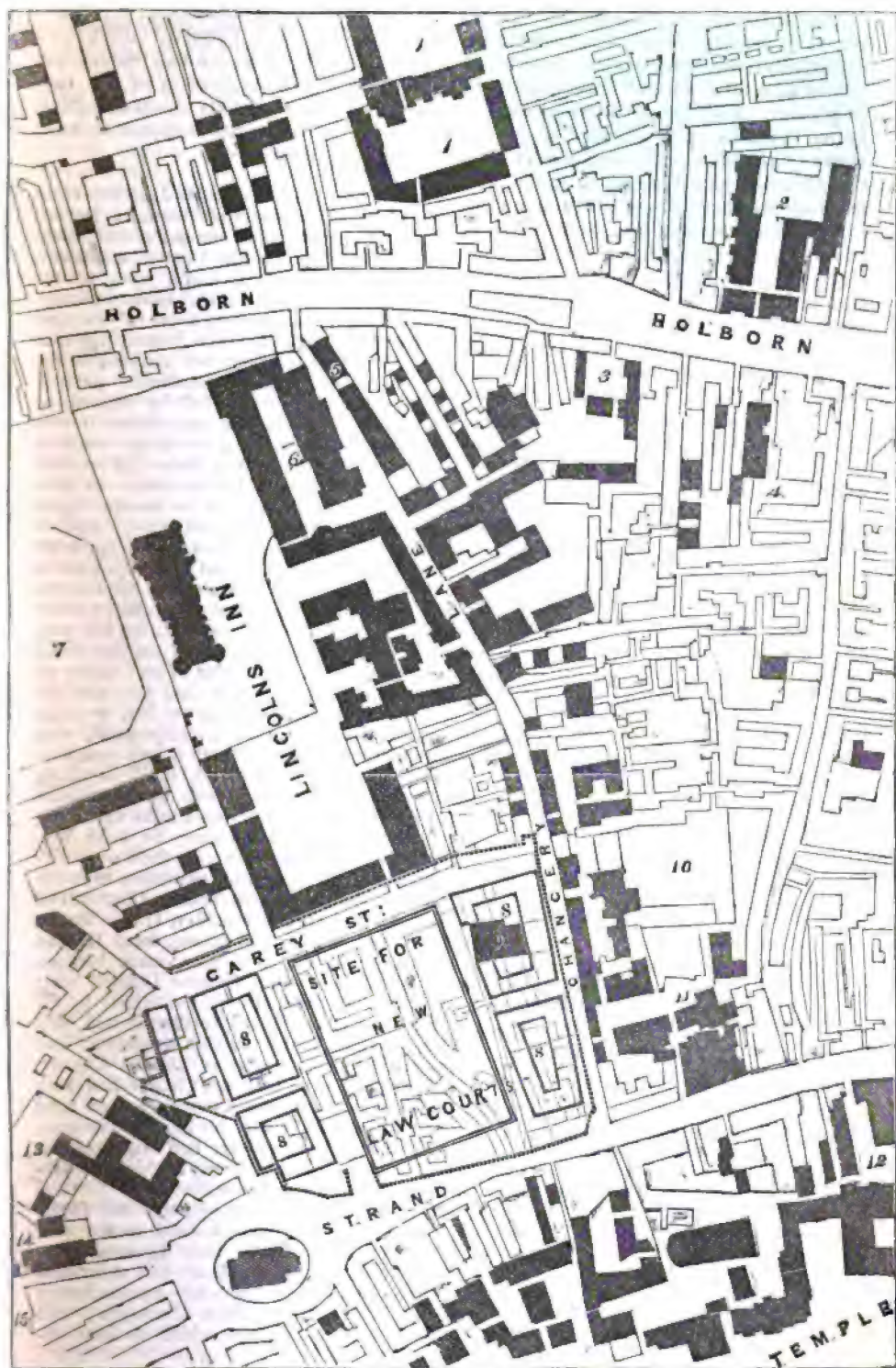
Mr. Maugham, the secretary to the Incorporated Law Society, gave evidence in support of the petition presented by that society, which consisted of 1350 members, and of another petition which had been promoted by the society, signed by 630 individual members of the profession, residing in various parts of the metropolis, as well in the City and West End, as in the neighbourhood of the inns of court.

He also stated, from several parliamentary returns, the amount of fees paid into the consolidated fund (after deducting salaries, rent and expenses) by the three common law courts, amounting to upwards of £30,000 a year, on which, however, certain pensions were chargeable, but which, by the death of the parties, would be gradually diminished. He also gave an account of the suitors fund and fee fund in Chancery, and stated the amount of the surplus. From the same returns he also showed the amount of rent paid by the several law and equity offices, which might be saved if those offices were removed to the site of the new courts. His evidence also went to show the inconvenient situation of the present offices in various parts of Chancery-lane, the Temple, Lincoln's Inn, and other places; and the great advantage and facility which would result in the dispatch of business by collecting all the offices under one roof.

Thus has the case been powerfully strengthened by this evidence, and the plans which have been published along with it, furnish on the face of them an irresistible argument. The plan of the new palace at Westminster shows the comparative insignificance of the space occupied by the present courts, the impossibility of extending it, and the great advantage to the design of the palace of removing the courts.

Then the second plan describes the proposed new site, with the chambers adjoining,—placed in the very heart of the law district. Thus on the south there is the Inner and Middle Temple, and several adjoining streets occupied by professional offices;—on the north is situate Lincoln's Inn, Lincoln's Inn Fields, Bedford-row, Gray's Inn, and Furnival Inn;—on the east, Chancery-lane, Serjeant's Inn, Symond's Inn, Staple Inn, Barnard's Inn, and various streets in which are solicitors' offices;—and on the west is New Inn,

\* This street might be readily united to Carey-street across the Rolls Estate, along the north sides of the new courts, and thence to Long-acre and the new opening to Piccadilly.





Clement's Inn, Lyon's Inn, &c. &c. We say the very locality, when thus viewed, demonstrates convincingly that this is the spot of all others in which the courts should be placed. And then let it never be forgotten that this "Law District" is also the centre of the metropolis, equi-distant from the City and the Houses of Parliament, and near the banks of our great river.

We deem a view of the *locus in quo* so important, and calculated to afford so convincing an argument in favour of the plan, that we have had an engraving made, (taken on a diminished scale from that of Mr. Barry,) showing the proposed site, and a large part of the surrounding streets and inns of court. The shaded parts of the engraving show the residence of the lawyers. The names of the principal places are stated on the plan, and the following statement will explain the details:—

The dotted line thus ..... shows the present state of the site, the dark double line thus ————— indicates the position of the proposed new courts, and the chambers of counsel and solicitors. Chancery-lane, and Carey-street, Lincoln's Inn, Holborn, the Strand, and the Temple, are conspicuously marked on the plan, but its diminished size renders it necessary to refer by numbers to other streets and places in the district. They are as follow:—

1. Gray's Inn.
2. Furnival's Inn.
3. Staple Inn.
4. Barnard's Inn.
5. Legal Observer Office.
6. Stone Buildings.
7. Lincoln's Inn Fields.
- 8, 8, 8, 8. New chambers for counsel and solicitors on the east and west sides of the courts.
9. The Incorporated Law Society.
10. The Roll's House, garden, &c.
11. Serjeant's Inn, and Clifford's Inn.
12. Serjeant's Inn, Fleet-street.
13. Clement's Inn, and New Inn.
14. Lyon's Inn.

## NOTES ON EQUITY.

SOLICITOR AND CLIENT. — PURCHASE. —  
FRAUD. — CONCEALMENT. — LAPSE OF  
TIME. — NO DEFENCE.

A VERY important and remarkable case,  
recently decided by the House of Lords,

is to be found in the last number of Messrs. Clarke & Finnelly's Reports,\* illustrative of the just severity with which professional frauds, happily in our country of but rare occurrence, are visited by courts of equity. The leading circumstances appear to have been shortly these:—

In the year 1770, the late Sir John Trevelyan was owner of the manor of Seton, in Devonshire. The steward and receiver of this estate was the late Mr. Thomas Charter, a solicitor, residing at Bishop's Lydeard, who, as the agent of Sir John in that and other business, had for many years enjoyed much of his confidence. In 1785, Sir John became desirous of selling this property, and authorised Mr. Charter to look out for a purchaser. Accordingly, it appeared that in 1787 he entered, on behalf of Sir John, into consecutive treaties with two gentlemen for a sale of the estate at 13,650*l.*, but the treaties broke off in both cases; whereupon Sir John wrote to him, saying he should be glad to receive 13,000 guineas for the property at any time, "and the sooner the better, as he knew how to apply the money." Upon this general authority, Charter opened a treaty with the trustees of Sir Thomas Acland, and a bargain was concluded, without reference to Sir John Trevelyan, for the purchase of the demesne lands of the manor by them at 12,023*l.* 15*s.*; after which Charter reported to Sir John that he had also sold the residue of the estate, being in fact, as it appeared, the manor or lordship itself, with certain lands appertaining to it, to a cousin of his own, (one James Charter,) at a sum which, together with the sum payable by the trustees of Sir Thomas Acland, would make up exactly 13,000 guineas. In due time, Sir John Trevelyan executed conveyances to these respective purchasers. The deed of conveyance to James Charter was prepared by Thomas Charter, and bore date the 1st and 2nd May, 1788. But by indentures of lease and release, dated 1st and 2nd June in the same year, made between James Charter and Thomas Charter, after reciting the conveyance to the former by Sir John Trevelyan, it was further recited, that the purchase money in that transaction had been the proper money of Thomas Charter, and that the name of James Charter had been made use of in the said conveyance upon trust only for Thomas Charter, his heirs, and assigns; and That Thomas Charter had requested the said James Charter to convey to him the premises comprised in the indenture of the 2nd May, 1788, which accordingly the said James Charter conveyed and assured to the said Thomas Charter with their appurtenances. Now all this part of the affair—this underhand juggle between the two cousins—was studiously concealed from Sir John Trevelyan; and herein was the fraud to which we have adverted.

Thomas Charter ceased to act as the solicitor and steward of Sir John Trevelyan in 1806. He died in 1810; and upon his death, his son and heir at law, Thomas Malet Charter, took possession of all his real estates. On the 3rd December, 1825, the solicitor of Thomas Malet Charter wrote to the solicitor of Sir John Trevelyan a letter, saying, "The manor of Seaton, and certain lands in that parish, formerly belonged to Sir John Trevelyan, who sold them to Sir Thomas Acland, *of whom they were purchased by the late Mr. Charter.*" The statement which we have quoted in italics suggesting to Sir John's mind that there was something wrong in the case, he ordered an investigation, the result of which was, that he became satisfied that a deep fraud had been committed upon him by his late steward. In this situation, it was determined to file a bill against Thomas Malet Charter, praying that he might be decreed to deliver up all title deeds, &c. relating to the estates in question then in his custody, and that the sale might be declared fraudulent, and that T. M. Charter might be ordered to reconvey and to account for the rents and profits. In April 1828, Sir John Trevelyan died; but the suit was soon revived by his son, the present baronet; and the cause came on for hearing in January 1835, before Sir C. C. Peppys, M. R., who made a decree conformable to the prayer of the bill, accompanying that decree with expressions too remarkable to be omitted in this place: "It does indeed become the duty of the court, when transactions of long standing are brought before it, most anxiously to weigh all the circumstances of the case, and to consider what evidence there may have been which, from the lapse of time, has been lost. But beyond this, in cases of fraud, I think time has no effect. Were it otherwise, the jurisdiction of the court would be defeated. And those who may be disposed fraudulently to appropriate to themselves the property of others, may be assured that no length of time will secure them in the enjoyment of their plunder, but that their children's children will be compelled by this court to restore it to those from whom it has been fraudulently abstracted."

From this decree the defeated party appealed to the House of Lords, contending that it was unjustifiable to open up a transaction which had been settled so long ago as the year 1788, and that even the existence of fraud did not warrant the doing so in a case where the party seeking to set aside the transaction had the means of ascertaining the circumstances, and had delayed for an unreasonable time to act upon it. These arguments, however, were unavailing, for the Lord Chancellor stated from the woolstack his impression of the evidence to be this: "That the property was purchased by Thomas Charter, in the name of James Charter, at the time when Thomas Charter was acting as agent to Sir John Trevelyan, and employed by him to dispose of it; that Sir John Trevelyan was not informed at the time of the true nature of the transaction;

that the purchase money paid was greatly below the value; that it was studiously concealed from Sir John Trevelyan that Thomas Charter had been the purchaser; and that this appears to have been discovered only in consequence of the letter written in the year 1825. Under these circumstances, time could not be set up as a bar to the suit, which in other respects rested upon the clearest principles of equity." Lord Campbell said, "the only doubt he had was, as to the lapse of time and acquiescence; for it was certainly important that there should be a limitation to inquiries of this sort;" but he was obliged to come to the conclusion that the remedy in this case was not barred, and that the parties had never, with a knowledge of the facts, done anything which could be considered to amount to acquiescence. The decree, therefore, was affirmed, with costs. Lord Cottenham, who was present, simply observing, that after carefully attending to the arguments at their lordships' bar, he had heard nothing to induce him to alter the opinion upon which the case had been decided by him in the court below.

This decision is perhaps one of the strongest upon record in support and enforcement of the great principle, that where there is fraud, length of time shall be no bar to the remedy; for there were many circumstances in the case which might appear well calculated at all events to put the late Sir John Trevelyan on his inquiry; circumstances which were pressed with great ability and confidence, though without success, by the appellant's counsel. The case in all respects is peculiarly deserving of a deliberate perusal and attention.

## POINTS IN COMMON LAW.

### LICENSE TO ENTER ON LAND — WHEN REVOCABLE.

It has been repeated so frequently as to have acquired all the triteness of a proverb, that the most difficult and important legal questions have arisen upon the simplest and most commonplace state of facts;—a circumstance not undeserving the consideration of those who advocate a cheap and summary mode of disposing of pecuniary claims of small amount.

In the case of *Wood v. Leadbitter*,<sup>a</sup> determined in the early part of the present year, the facts in evidence were, that Lord Eglintoun, as the steward of the Doncaster races in 1843, authorised tickets to be issued and sold for a guinea, entitling the holder to come into the Grand Stand, and the surrounding inclosure,

<sup>a</sup> Mees. & W. vol. 13, p. 838.

during the races; that the plaintiff purchased one of the tickets and came within the inclosure whilst the races were going on; that the defendant, by order of Lord Eglintoun, desired the plaintiff to quit the inclosure, warning him that if he refused to leave, force would be used; and that the plaintiff declining to retire, the defendant forced him out, using no unnecessary violence, and not offering to return the money paid for the ticket.

The plaintiff brought an action of trespass for the assault, and the defendant justified as the servant of Lord Eglintoun, to whom the close belonged. The plaintiff replied, that at the time of the assault he was in the close by the leave and license of Lord Eglintoun; and the defendant, by his rejoinder, traversed the leave and license.

This simple state of the facts and pleadings has given rise to an elaborate argument, occupying the Court of Exchequer for the greater part of three days, and followed by a judgment of commensurate extent, involving legal principles extensively applicable, in which the authority of a deliberate decision of the Court of Common Pleas, in the time of Chief Justice Gibbs, has been directly impugned, and the weight of some other authorities much questioned.

The case was discussed upon an application for a new trial, on the ground of misdirection.

Rolfe, B., (who presided at the trial,) told the jury, that assuming the ticket to have been sold to the plaintiff by the authority of Lord Eglintoun, still it was lawful for his lordship, without returning the price of the ticket, and without assigning any reason, to order the plaintiff to quit the inclosure, and if the jury were satisfied that notice was given to the plaintiff, and a reasonable time allowed him to depart before force was resorted to, it could not be said that the plaintiff was in the close by the leave and license of Lord Eglintoun when the assault was committed. Under this direction, the jury found for the defendant.

On the part of the plaintiff it was contended, that the ticket operated as a license from Lord Eglintoun to the plaintiff, to come within the inclosure during the races, and was not revocable, or at all events not without returning the money actually paid: and for this proposition, four cases were chiefly relied upon. As to two of those cases,<sup>b</sup> the Court of Exchequer thought they had little or no bearing on the point for which they were cited. The case of *Taylor v. Waters*,<sup>c</sup> however, it was admitted, stood on a different ground. In that case, the plaintiff became the purchaser of what was

called "a silver ticket" for the Opera House in 1799, and continued, by virtue of that ticket, to attend the theatre until the year 1814, when Waters, the door-keeper, by direction of certain trustees then in possession of the premises, prevented him from entering the theatre during the performance of an opera. For this obstruction the plaintiff brought his action, and had a verdict, which the Court of Common Pleas afterwards upheld, the judgment proceeding on the ground that the right claimed by the plaintiff was not an interest in land, required by the Statute of Frauds to be in writing, but that it was an irrevocable license to permit the plaintiff to enjoy the privilege of entering and staying in the theatre during the public performances.

The last, as well as the most recent, authority relied upon on behalf of the plaintiff, was a case of *Wood v. Manley*,<sup>d</sup> determined by the Court of Queen's Bench in 1839.

It was an action of trespass *quare clausum fregit*, to which the defendant pleaded, that he was possessed of a large quantity of hay on the plaintiff's close, and that by leave of the plaintiff he entered on the close to remove it. It appeared that the hay had been distrained by the plaintiff's landlord for rent, and sold, with the plaintiff's assent, upon condition that the purchaser might leave it on the close until Lady Day, and come as often as he thought fit to remove it. The defendant having become the purchaser upon these terms, the plaintiff locked up his gate before Lady Day, and refused to allow the defendant admission, and the defendant broke open the gate in order to remove his hay. The learned judge who tried the cause,<sup>e</sup> told the jury, that if the plaintiff assented to the conditions of sale at the time of the sale, the license to come on the land from time to time before Lady Day, to remove the hay, was irrevocable. Upon this summing up, the jury found for the defendant; and the Court of Queen's Bench refused to disturb the finding, on the principle, that a person who, by consenting to certain terms, induces another to do an act, shall not afterwards withdraw from those terms; and *Patteson, J.* appears to have grounded his judgment very much on the authority of *Taylor v. Waters*, already referred to.

The Court of Exchequer, in the principal case, described the judgment of the Court of Common Pleas, in *Taylor v. Waters*, as being "to the last degree unsatisfactory," and were of opinion, that the attention of that court could not have been called to the principles and earlier authorities, or else *C. J. Gibbs*, when he laid it down that the license conferred by the possession of a silver ticket was irre-

<sup>b</sup> *Webb v. Paternoster*, Palm. 71; Roll, 143 and 152; Noy 98; Pop. 151, Godb. 282, S. C.; and *Wood v. Lake*, Sayer, 3.

<sup>c</sup> 7 Taunt. 374.

<sup>d</sup> 11 Ad. & E. 34; 3 Per. & D. 5.

<sup>e</sup> The late Mr. Justice Erskine.

vocable, would have paused before he sanctioned a doctrine so entirely repugnant to principle. So far as the decision of a court of co-ordinate jurisdiction can be said to produce such an effect, the judgment of the Court of Exchequer in *Wood v. Leadbitter* overrules the oft-cited case of *Taylor v. Waters*. With respect to the more recent case of *Wood v. Manley*, the Court of Exchequer thought it rightly decided, on the ground that the license to remove the hay was not a mere license, but a license coupled with an interest; and it was likened to the case of one man taking another's goods and putting them on his land, where the owner of the goods was justified in going on the land and removing them.<sup>1</sup>

In reference to the case of *Wood v. Leadbitter*, which was immediately under consideration, it was observed, that the right claimed by the plaintiff was a right, during a portion of each day, for a limited number of days, to pass into and through, and to remain in, a certain close belonging to Lord Eglintoun,—to go and remain where, if he went and remained, he would, but for the ticket, be a trespasser. This was a right affecting land, at least as obviously and extensively as a right of way over land,—it was a right of way and something more; and if the case was to be decided on general principles only, and independently of authority, it was perfectly clear that no such right could be created except by deed. It was contended, however, that the plaintiff was not driven to claim as grantee, as he had a license from Lord Eglintoun to be on the close at the time he was turned out, which license, under the circumstances, was irrevocable. As to the nature of a license and its incidents, the court laid great stress upon the judgment of Lord Chief Justice Vaughan, in *Thomas v. Sorrell*: “A dispensation or license,” (says the Lord Chief Justice in that case,) “properly passeth no interest nor alters or transfers property in anything, but only makes an action lawful which without it had been unlawful; as a license to go beyond the seas, to hunt in a man's park, to come into his house, are only actions which without license had been unlawful. But a license to hunt in a man's park and carry away the deer killed to his own use, to cut down a tree in a man's ground and to carry it away the next day after to his own use, are licenses as to the acts of hunting and cutting down; but as to the carrying away of the deer killed, and tree cut down, they are grants.”

Adopting this distinction, the court laid it down, that a mere license is revocable, but that when a license is comprised or

connected with a grant, the party who has given it cannot in general revoke it so as to defeat his grant to which it was an incident. It was further observed, that a mere license under seal is as revocable as a license by parol; and on the other hand, that a license with a grant is as irrevocable when made by parol, as a license by deed, provided only that the grant is of a nature capable of being made by parol. But where there is a license by parol, coupled with a parol grant of something incapable of being granted otherwise than by deed, the license is a mere license, it is not an incident to a valid grant, and is therefore revocable. Applying these principles to the case under consideration, the court was unanimously of opinion,—1st, That the license granted to the plaintiff by virtue of the ticket purchased by him, was a mere license, unaccompanied by any valid grant; 2ndly, That the license was revocable, and had been revoked by calling on the plaintiff to withdraw from the inclosure and allowing him a reasonable time to depart. Assuming these propositions to be correct, it followed that the defendant, as the servant of Lord Eglintoun, was justified in turning the plaintiff out of the inclosure.

Upon these grounds, stated and discussed at considerable length in the judgment, the court decided that the direction given to the jury at the trial was correct, and therefore discharged the rule for a new trial.

The fact, that money was paid for the ticket, and no offer made to return the money when the license was revoked, is not specifically adverted to in the judgment, but was clearly within the contemplation of the court, and may therefore be assumed to be a circumstance considered immaterial in the decision of the case.

#### RIGHT OF PARTY IN CRIMINAL CUSTODY TO COPIES OF DEPOSITIONS.

The decision of a question of construction in criminal procedure, so important, that Mr. Justice Wightman, before whom it was first brought, thought it desirable it should be discussed in the full court, has lately been reported.<sup>1</sup>

The circumstances under which the question arose were shortly as follow:—

Upon the examination of William Henry Barber before the Lord Mayor, on a charge of

<sup>1</sup> Vin. Abr. Trespass, (H.) A. 2, pl. 12; *Patrick v. Colerick*, 3 M. & W. 483.

<sup>2</sup> Vaughan, 351.

<sup>1</sup> *The Queen v. The Lord Mayor of London*, 5 Q. B. 555, 1 D. & M. 484.

forging the will of Emma Slack, Joseph Fletcher was called and examined as a witness for the defendant, and the facts disclosed on his examination induced the Lord Mayor to believe that he was an accessory before the fact, and he was thereupon committed to Giltspur Street Compter, under a warrant in the usual form, with directions thereon that he should be brought up on a future day then specified for further examination. On coming up on the day named, other witnesses were examined, and Joseph Fletcher was remanded and ordered to be brought up again on a future day then named for further examination. Between the day when he was so remanded and the day when he was again brought up and finally committed for trial, Fletcher's attorney applied, on his behalf, for copies of the examinations which had been taken in writing before the Lord Mayor; but his lordship, under the advice of his chief clerk, refused the application.

The matter was brought before the Court of Queen's Bench, upon a rule for a mandamus, commanding the Lord Mayor to deliver to Joseph Fletcher copies of the examinations of the witnesses respectively upon whose depositions he had been from time to time and then was committed to prison. The question turned upon the construction of the stat. 6 & 7 Wm. 4, c. 114, which is entitled "An act for enabling persons indicted of felony to make their defence by counsel or attorney;" and the point chiefly considered was, whether the statute applied to the stage of the proceedings in which this application was made, or only after a party has been actually committed for trial.

The 3rd section enacts, "That all persons who after the passing of this act shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have, on demand, (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same,) copies of the examinations of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding," &c. "Provided always, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge, or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial: but it shall nevertheless be competent for such judge, or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy

of the examination of witnesses not having been previously had by the party charged."

On behalf of the prisoner it was argued, that the statute made no distinction between a committal for trial and a committal for further examination; and that as, according to modern practice, the preliminary proceeding may be continued for many weeks, the accused was as much put upon his defence when charged before the justice, as at any subsequent period. On the other hand it was contended, that the object of the statutory provision above cited was only to assist the party on his trial, and that obvious inconvenience would arise if the depositions could be called for during the preliminary inquiry.

The court was clearly of opinion, that the purpose of the act was confined to the trial of the accused party. A doubt arose upon the words "committed for any offence;" but the prisoner is not committed for any offence until he is committed for trial. When a magistrate commits for further examination, as in this case, he must be taken to have retained the power of saying, that although enough appeared to authorise remanding, there was not enough to warrant him in committing for trial; and the privilege of demanding copies of the examination is confined to the case in which there is a trial. Upon these grounds the rule for a mandamus was discharged.

In reference to a practice which, it was said in this case, prevailed at the metropolitan police offices, to suspend the signing of depositions until the prisoner was about to be fully committed for trial, Lord Denman, C. J., observed, that "it is the magistrate's duty to sign every deposition, (the witness having first signed it,) as the proceedings go on."

## NOTICES OF NEW BOOKS.

*The Code of Practice of the High Court of Chancery, containing the General Orders from the year 1814 to the present time, including those of the 8th May, 1845; with copious Explanatory Notes, and a very full Index.* By THOMAS KENNEDY, a Solicitor of the Court. Spettigue. 1845. Second Edition.

THE abolition of the six clerks' office, whilst it effected much good in many respects, was accompanied by one inconvenience: it destroyed one of the sources of information on many of the details of practice. The clerks in court, and their agents, were of course well versed in all

the proceedings which were then conducted in the six clerks' office, and they were always ready to answer the inquiries of the solicitors and their clerks. The business being now transferred to the solicitors, it is necessary that they should acquire a knowledge of all matters of practice. It is therefore of great advantage that competent works are published for their assistance. The last New Orders in Chancery, which came into operation on the 28th October, have effected many important changes in practice. In our last volume, after printing the orders *verbatim*, we were enabled to give a series of notes showing the effect of the alterations on the existing practice. We trust those notes will be found useful to our readers; but we were of course unable to enter into any minute details.

We have now to call the attention of our readers to an edition of the orders of the 8th May, by Mr. Kennedy, which, with other orders of court, completes the 2nd edition of his "Code of Practice of the High Court of Chancery."

The alterations in the rules of procedure rendered it necessary that great additions should be made to the former edition of that work, and Mr. Kennedy has in the present publication made those additions as complete and as useful as possible, and in such a way as will much alleviate the arduous duties which the profession must necessarily execute in carrying into practice the recent alterations.

With regard to the orders which have been discharged by the orders of 8th May, 1845, Mr. Kennedy observes, that they will still be useful for the purpose of understanding the new orders. In order, therefore, that it may be readily ascertained whether they are existing orders or not, references are made as well to them as to repealed statutes, and they are distinguished in the index as discharged orders.

Having experienced the difficulty in which practitioners are placed, in acting upon the orders of the court, when, in the hurry of business, they are called upon to determine how and to what extent an order is affected by others bearing upon the same subject, Mr. Kennedy has directed his attention to facilitate their labour in this respect. He observes, that

"The untrodden path is always the most impracticable. The greater obstacles arise with respect to orders recently issued; for when orders have been acted upon for some time,

the professional man, at the cost either of his neighbour or himself, acquires a knowledge of them, which perhaps he could not have attained with the most diligent attention, even if his other duties permitted him to give sufficient time to the subject. I have, for this reason, more especially devoted myself to the consideration of the last new orders, which, although in a more classified form than those hitherto issued, in very many instances require, in order to arrive at a correct interpretation of them, to be attentively compared one with another, as well as with the previously existing orders on which they are respectively founded. To assist in this, I have not spared any pains in referring, in the note, to all orders which appeared to me to affect the particular order under consideration."

The author has given his best attention to the orders of the court in preparing his classification of and decisions upon them, part of which was published before the last orders were promulgated. He has therefore been enabled to perform his present task with greater satisfaction than otherwise he could have done. We agree with him in the conviction at which he arrives, of the importance of a complete revision and arrangement of all existing orders, under the authority and sanction of the court. As any but a judicial interpretation of the orders would only be calculated to mislead, he has very properly avoided as much as possible putting a construction upon them,—deeming it safer and better to lay before the practitioner the necessary materials, and leave him to draw his own conclusion. He then states:—

"My great object, therefore, has been, to the best of my ability, to bring to notice the variations of each new order from previously existing orders, and the bearings of other orders upon it. In doing this, feeling how difficult it is to give a correct abridgment of an order, I have, at the risk of incurring the objection of prolixity, in most instances quoted the altered part of the old orders *verbatim*, and referred to the previous page in the book where they are to be found. I have also occasionally printed in italics the new parts of the orders, for the purpose of more readily directing attention to the new matter."

With a view to afford greater facility of reference, the author has considerably enlarged the index to the former edition, and, under the head of "TIME," has given a complete table of the times of procedure according to the last new orders. From this Time Table we make the following extracts, which will afford a good example of the utility of the work:—

## TIMES OF PROCEDURE.

To be the same in town and country causes.  
8 May, 1845—Ord. 16.

## 1. COMPUTATION OF TIME.

*Time limited* from or after any date or event appointed or allowed for doing any act, &c., not to include the day of the date or of the happening of the event . . . Ord. 11.

By months—if calendar not expressed, to be computed by lunar months of 28 days. Ord. 12.

Where the time for doing an act or taking a proceeding expires on a Sunday or on a day when the offices are closed, such act or proceeding may be done or taken on the next day of their opening . . . Ord. 13.

The vacations are not to be reckoned in the times for . . . Ord. 14.

(1.) amending or obtaining order for leave to amend bills.

(2.) filing or referring exceptions or obtaining a report thereon where the time is not limited by the order, or by a notice in cases of election.

(3.) setting down pleas, demurrers, or objections for want of parties.

(4.) filing replications or setting down causes on bill and answer after answer to an amended bill, to which an answer has not been required.

The time pending security being given after an order for security for costs is not to be reckoned in the time for pleading, answering, or demurring . . . Ord. 15.

## 2. ENLARGEMENT OF TIME.

*The Master* may enlarge the time for answering . . . Ord. 18.

For making his report on exceptions, except where the time is limited by the order of reference, or notice has been given in election cases. . . Ord. 19.

May further enlarge any time appointed or enlarged by himself . . . Ord. 20.

The power of the court to enlarge or abridge time is unaffected by the orders of 8th May, 1845 . . . Ord. 21.

A very useful chart, by leave of the author, has been published of this "Chancery Time Table," comprising the various proceedings in a cause,—such as Subpœna; Bill; Appearance; Pleading; Answering; Excepting; Traversing Note; Replication and setting down Cause; Examining Witnesses; Passing Publication; Dismissing Bill; Decrees; Contempts, &c.

## THE FIRST OF NOVEMBER.

## AN INVITATION TO WESTMINSTER HALL.

Come, brother lawyers, vacation is ended,  
Submit with good grace to necessity's call;  
Let the Chancellor's *entrées* be fully attended,  
And hurry on Monday to Westminster Hall.

Judges, solicitors, juniors, and leaders,—  
You whose business is vast, you whose business is small;

Conveyancers, draftsmen, and you, special pleaders,  
All mingle on Monday in Westminster Hall.

Come from the scenes that your fancy selected,

Come from amusements beginning to pall;

Come, but come not with an air so dejected,  
Be lively on Monday in Westminster Hall.

Come foremost all you who, "*Audaces Juventû*,"

Have swam the blue lake, climbed the precipice tall;

Indulge all the fancies of sweet six-and-twenty,—  
Tho' briefcien, you're welcome to Westminster Hall.

East, west, north, or south, wheresoe'er you have wandered,

Where railroad can rush, or old diligence crawl;

Bring anecdotes worth all the coin you have squandered,  
And vent them on Monday in Westminster Hall.

Was it touring or sporting, or yachting or sketching,  
Or preferring, like me, to do nothing at all?

Whatever it was, you're expected to fetch in  
At least one good story for Westminster Hall.

Come tell of escapes from Italian banditti,

And how you repressed the too arrogant Gaul;

And how, in each scene of the wild or the city,  
You supported the honour of Westminster Hall.

Come from the Pyrenees filled with guerillas,—

But look sharp, or perhaps you'll not come thence at all;

Come from the "Gems" of the Bobboli villas,  
And enlighten the taste of all Westminster Hall.

Come from the bringing down moose deer in Norway.

Come from the rear of Niagara's fall;

Your wigs and your law reassume at the door-way  
That ushers you into old Westminster Hall.

And come you, my grave lords, who, life's labour to soften,

Have been musing in woodlands whose leaves round you fall,

As you enter the scenes where you've triumph'd so often,

You're sure of your welcome to Westminster Hall.

Come, virtuous Tindal, whose just elevation

Commanded the hearty applause of us all;

Worth, mildness, and power of mind make thy station  
By right 'mong the foremost in Westminster Hall.

Come, Wigram the learned, come, Bruce the vivacious,  
Come, Creswell the courteous, with quick-witted Maule;

Come, Denman the stately, come, Parke the sagacious,—

You are all of you wanted in Westminster Hall.

Come, witty George Rose, with thy budget of travel,  
From Inspruck, or Salzburg, Wiesbaden or Bâle;

Thy mirth-moving eye has got much to unravel,  
And thy jokes are at premium in Westminster Hall.

Come, Wetherell, come with thy many-toned thunder,

And Sesquipedalian epithets all,  
With odd-chosen tropes make solicitors wonder,  
And keep us from sleeping in Westminster Hall.

Fresh rambles tell, Talfourd; of railways speak,  
Austin;

Wilde, Kelly, and Bethell, come, keep up the ball;

The fountain of talk there's no fear of exhausting,  
Then let it flow freely in Westminster Hall.

But some names there are that a fond recollection,  
At meetings like this, must be sure to recal,—  
Tho' they cannot respond to the voice of affection,  
And their places are vacant at Westminster Hall.

Lamented Duval! the profound, the clear-seeing,  
How long was thy judgment a law to us all!  
Full of days, full of honours, thou changest thy being,

But long will thy name live in Westminster Hall.

But, Follett! oh, how shall I venture to praise thee!  
When my dull, lagging words must each reader forestall;

And praises too cold seem to sink thee, not raise thee,

Thou loved of thy country and Westminster Hall.

When nobles, and statesmen, and judges contended  
For the honour of bearing thy funeral pall,  
They embodied the thought that thy coffin attended,  
The thought of the senate and Westminster Hall.

With a long path of glory spread brightly before thee,

Cut off in thy prime, did thy usefulness fall;  
And 'tis Justice herself bids the world to deplore thee,

And to weep for the chosen of Westminster Hall.

[Here about 500 stanzas are unfortunately lost, from the impossibility of making out the curious character in which the manuscript has been sent us; enough, however, can be made out to show that the poet soon turned to a more lively strain, and attempted to celebrate with grateful triumph the late auspicious visit of her Majesty to Lincoln's Inn, dwelling upon every circumstance with laudable minuteness, beginning with the gracious condescension of the Queen and her Illustrious Consort, and not sparing us the brightness of the ribbons on the necks of the horses, the flavour of the lobster salad, or the sparkling of the champagne. When the author recovers from this outpouring of loyal exultation, he returns to his task of sketching the characters of various high legal functionaries, not without injecting a sly hint or two that the list cannot be considered as perfect till his own name be added to the number. The concluding stanza, however, is perfectly legible, and seems as if, during the long-winded performance, term had actually begun.]

Come, loiterers, come, don't you long to awaken  
The echoes that sleep by each rafter and wall?—  
But hark! see, the serjeants their places have taken,  
And the Chancellor's self enters Westminster Hall.

## NOTES OF THE WEEK.

### TAXING MASTER OF THE COURT OF BANKRUPTCY.

We understand that the Lord Chancellor has appointed John Lucas, Esq., solicitor, (of the firm of Lucas and Parkinson, Argyll-street,) Taxing Master of the Court of Bankruptcy, in the room of D. F. Richardson, Esq., deceased, and that Mr. Lucas has already entered upon the duties of his office.

### MICHAELMAS TERM EXAMINATION.

The number of candidates who have given notice for Michaelmas Term is 180, but of these seventeen have been already examined, and many others, from various causes, will probably not make their appearance. Several have already withdrawn their names from the Examination List.

The examination will probably take place on Tuesday, the 18th Nov., and the previous testimonials are to be left on the 10th.

### BENCHERS OF THE INNER TEMPLE.

The exclusion of one of the new Queen's Counsel from the Benchership of the Inner Temple has given occasion to a pamphlet on the mode of conducting elections at this Society, and no inconsiderable sensation has been excited at the bar.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Vice-Chancellor Knight Bruce.

[Reported by J. H. COOKE, Esq., Barrister at Law.]

#### PETITION.—RAILWAY DEPOSIT.—PAYMENT OF MONEY.—RAILWAY ACT.—NOTICE.

*Money was paid into the hands of the Accountant General, by five of the directors of a Railway Act, by which leave was given to apply for repayment, upon the petition of the majority of those by whom it had been paid.*

*Held, upon the petition of three of these directors, that the money might be repaid, the others being served with notice.*

Mr. Rogers appeared upon the petition of three of the directors of the Blackpool Railway. The petition prayed the repayment of a sum of money which had been paid into the Bank of England, by themselves and two other directors. The petition was accompanied by the Speaker's certificate that the act of parliament under which the directors acted, had passed. The act authorized an application for repayment by the "majority" of those by whom it had been paid in. Mr. Rogers stated, that the Master of the Rolls (Lord Langdale) had required the other parties to be served with notice of the petition.

*Vice-Chancellor Bruce.*—Yes, I shall follow that requisition. It is, certainly, the safer course.

*Ex parte Blackpool Railway Company.* Lincoln's Inn, July 26.



## Queen's Bench Practice Court.

[Reported by R. H. WOOLRYCH, Esq., Barrister at Law.]

## RESPIITED APPEAL.—NOTICE.—MANDAMUS.

*Where a rule of quarter sessions required twenty-eight clear days' notice of appeal, fourteen days' notice only having been given, the sessions refused to hear the appeal: Held, that the rule of sessions was not so unreasonable as to induce this court to interfere by mandamus.*

Townsend had obtained a rule nisi for a mandamus commanding the justices of Montgomeryshire to enter continuances and hear an appeal against an order for the removal of a pauper. The order was dated on the 18th December, 1843, and notice of the same was given on the 20th December. No notice of appeal being served, the order was executed on the 13th January, 1844. At the Easter sessions, which were holden in the ensuing April, the appeal was entered and respited, and on the 19th June notice of appeal for the ensuing sessions on the 4th July. And grounds of appeal were served upon the removing parish. One of the rules of the Montgomeryshire sessions required that notice of prosecuting adjourned appeals should be given twenty-eight clear days before the sessions; and further provided, that unless the appellants should prosecute the appeal with effect at the next sessions, the order of removal should stand confirmed. When the appeal was called on, it was objected by the respondents, that inasmuch as there had been only fourteen days' notice of appeal, the above rule had not been complied with. It was contended, on behalf of the appellants, that the rule was unreasonable, and that fourteen days' notice was sufficient. The sessions being of opinion that the rule in question had not been complied with, confirmed the order of removal, with costs; whereupon the present rule was obtained.

*Bodkin* showed cause.—The court of quarter sessions are the judges of their own practice, and this court will not interfere unless the rules by which it is governed are clearly contrary to reason. The present rule is reasonable and convenient. It relates to respited appeals only, in which case it is fit that longer notice should be given. In *R. v. Justices of Monmouthshire*, 3 D. P. C. 306, where the practice of the sessions required fourteen days' notice, if an adjourned appeal, and an appeal was dismissed for want of such notice, the court refused to interfere; and it is there said that the justices alone are to decide what notice shall be required. Besides, here the order of respite itself directed that it should be served twenty-eight days before the sessions.

Townsend and Pashley, in support of the rule.—This rule is unreasonable, and this court will restrain the sessions from giving effect to it. The legislature have, in the 4 & 5 W. 4, c. 76, given a statutory declaration of what shall be deemed a reasonable notice, by requiring

fourteen days' notice. In almost all legal proceedings, the longest notice required is one of fourteen days, and the period of twenty-eight days' notice is obviously unreasonable and inconvenient. In *R. v. Justices of Lancashire*, 7 B. & C. 691, Lord Tenterden said, that though the justices have a discretionary power to make rules for the guidance of their practice, this court will, for the purposes of justice, interfere to control that discretion. *R. v. Justices of Monmouthshire*, 3 D. P. C. 306; *R. v. Justices of Wiltshire*, 10 East. 404; *R. v. Justices of Staffordshire*, 4 Ad. & Ell. 842; *R. v. Justices of Norfolk*, 5 B. & Ad. 990; and *R. v. Justices of West Riding*, 2 Q. B. 716, were also referred to.

*Cur. adv. vult.*

*Wightman*, J., on a subsequent day delivered judgment. His lordship, after having stated the facts said, "The question to be decided in this case is, whether a rule of sessions requiring twenty-eight days' notice of trial of a respited appeal is so clearly unreasonable as to induce this court to interfere, and the result of the cases referred to in argument *R. v. Justices of Wilts*, &c., is that the Court of Quarter Sessions are the only judges of their own practice, and this court will not interfere with the exercise of their discretion as long as their rules are not contrary to reason. Now, considering that the rule which has been the subject of discussion in the present case, only applies to respited appeals, and that there was in fact in this case an interval of three months between the two sessions, an interval amply sufficient to have given the required notice, I cannot regard such rule as an unreasonable one. That being so, the court cannot interfere, and the rule must be discharged.

R. D.

*R. v. Justices of Montgomeryshire*, Q. B. P. C. T. T., 1845.

## Common Pleas.

## EJECTMENT.—JUDGMENT AGAINST THE CASUAL EJECTOR.

*Where there are several tenants, the notice at the foot of the declaration served upon each, should contain the names of all.*

*Bytes*, Serjeant, moved for judgment against the casual ejector. There were several tenants. The notice at the foot of the declaration served upon each was addressed to that one alone.

*Per curiam*.—All the names must be added. This being done, the rule may go.

Rule absolute accordingly.

*Doe d. Muskett v. Roe*. T. T., 1845.

## PRACTICE.—ISSUABLE PLEAS.

*After obtaining an order for particulars of set-off, it is too late to sign judgment on the ground that the pleas delivered are not issuable, the defendant being under terms.*

The defendant, being under terms to plead issuably, delivered several pleas, one being a

complicated plea of set-off. The plaintiff obtained an order for particulars of the alleged set-off; and afterwards signed judgment, treating the pleas delivered as a nullity.

*Byles*, Serjeant, on a former day, obtained a rule to show cause why the judgment should not be set aside for irregularity.

*Channell*, Serjeant, showed cause. He cited *Ford v. Bernard*, 6 Bing. 534, and *Trott v. Smith*, 9 M. & W. 795. [*Maule*, J.—By obtaining the order for particulars of the defendant's set-off, you elected to treat the thing delivered as a plea.] We were entitled to the information sought, in order to be in a condition to lay instructions before counsel.

*Tisdal*, C. J. The particulars of set-off would not enable you to see whether or not the pleas are issuable.

*Maule*, J. The attorney must be presumed to know whether or not the pleas are issuable. Rule absolute.

*Scott v. Weston*. T. T., 1845.

### Exchequer.

[Reported by A. P. HURLSTONE, Esq., Barrister-at-Law.]

#### BILL OF COSTS.—ATTORNEY.—ATTACHMENT.—CONTEMPT.

*Where a bill of costs is ordered to be delivered to certain parties or their attorney, a demand of the bill by the clerk or agent of such attorney, is not sufficient to create a contempt by reason of its non-delivery.*

*The court will not in general grant a rule nisi for an attachment for contempt on the last day of term.*

On the last day of Easter Term, *Willis* had obtained a rule nisi for an attachment against an attorney for a contempt in not delivering a bill of costs pursuant to a judge's order. The order directed that the bill should be delivered to the parties or their attorney.

*Carrington* showed cause, and objected in the first instance that the rule was one which the court would not entertain on the last day of term. He cited *Archbold's Prac.* 1268.

*Pollock*, C. B. The master reports that the court does not usually grant a rule of this nature on the last day of term, but that that is no ground for discharging it: *quod non debet fieri, factum valet*.

*Carrington* then objected that there had not been a sufficient demand of the bill of costs to bring the attorney into contempt. His affidavit stated that the demand was not made by the parties entitled to the bill or their attorney, but by his clerk or agent. Such a demand was clearly insufficient. *Es parte Fortescue*, 2 Dow. P. C. 448, decided that in order to bring a party into contempt for non-delivery of a bond pursuant to a rule of court, the demand of it must be made by one of the parties mentioned in the rule as entitled to receive it. Where an award directs a bond to be delivered to the plaintiffs, a demand by one will not suffice in the absence of a power of attorney

from the other. *Sykes and others v. Haigh*, 2 Scott, 193. And an attachment for a non-payment of costs cannot be supported by a demand of the costs by a third person authorized by the attorney to receive them. *Clark v. Dignum*, 3 M. & W. 319.

*Willis* in support of the rule referred to *Price v. Hayman*, 4 M. & W. 8.

*Pollock*, C. B. There is no foundation whatever for the rule, and it must be discharged with costs.

*In re Whalley*, Exchequer, Trinity Term, 22 May, 1845.

### CHANCERY SITTINGS.

Michaelmas Term, 1845.

AT WESTMINSTER.

#### Lord Chancellor.

Monday . . .	Nov. 3	Appeal Motions.
Tuesday . . .	4	Petition-day.
Wednesday . . .	5	
Thursday . . .	6	
Friday . . .	7	
Saturday . . .	8	Appeals.
Monday . . .	10	
Tuesday . . .	11	
Wednesday . . .	12	
Thursday . . .	13	Appeal Motions.
Friday . . .	14	(Petition-day) Unopposed only and Appeals.
Saturday . . .	15	
Monday . . .	17	Appeals.
Tuesday . . .	18	
Wednesday . . .	19	
Thursday . . .	20	Appeal Motions.
Friday . . .	21	(Petition-day) Unopposed only and Appeals.
Saturday . . .	22	
Monday . . .	24	Appeals.
Tuesday . . .	25	Appeal Motions.

#### Master of the Rolls.

Monday . . .	Nov. 3	Motions.
Tuesday . . .	4	Petitions—The unopposed first.
Wednesday . . .	5	
Thursday . . .	6	Pleas, Demurrers, Causes,
Friday . . .	7	Further Directions, and
Saturday . . .	8	Exceptions.
Monday . . .	10	
Tuesday . . .	11	Petitions—The unopposed first.
Wednesday . . .	12	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . .	13	Motions
Friday . . .	14	Pleas, Demurrers, Causes,
Saturday . . .	15	Further Directions, and
Monday . . .	17	Exceptions.
Tuesday . . .	18	Petitions—The unopposed first.
Wednesday . . .	19	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . .	20	Motions.
Friday . . .	21	Pleas, Demurrers, Causes,
Saturday . . .	22	Further Directions, and
Monday . . .	24	Exceptions.
Tuesday . . .	25	Motions.

Short Causes and Consent Causes every Tuesday at the sitting of the court.

NOTICE.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

### Vice-Chancellor of England.

Monday . . . Nov. 3	Motions.
Tuesday . . . 4	Petition-day.
Wednesday . . . 5	{ Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Thursday . . . 6	
Friday . . . 7	{ Unopposed Petitions, Short Causes, and Causes.
Saturday . . . 8	
Monday . . . 10	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 11	
Wednesday . . . 12	{ Motions.
Thursday . . . 13	
Friday . . . 14	{ (Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday . . . 15	
Monday . . . 17	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 18	
Wednesday . . . 19	{ Motions.
Thursday . . . 20	
Friday . . . 21	{ (Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday . . . 22	
Monday . . . 24	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 25	

### Vice-Chancellor Knight Bruce.

#### AT LINCOLN'S INN.

Saturday . . . Nov. 1 Bankrupt Petitions.

#### AT WESTMINSTER.

Monday . . . Nov. 3	Motions and Causes.
Tuesday . . . 4	{ (Petition-day) Petitions and Causes.
Wednesday . . . 5	
Thursday . . . 6	{ Bankrupt Petitions and Causes.
Friday . . . 7	
Saturday . . . 8	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 10	
Tuesday . . . 11	{ Short Causes and Causes.
Wednesday . . . 12	
Thursday . . . 13	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . 14	
Saturday . . . 15	{ Bankrupt Petitions and Causes.
Monday . . . 17	
Tuesday . . . 18	{ Motions and Ditto.
Wednesday . . . 19	
Thursday . . . 20	{ (Petition-day) Petitions and Causes.
Friday . . . 21	
Saturday . . . 22	{ Short Causes and Causes.

Monday . . . 24	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 25	

### Vice-Chancellor Wigram.

Monday . . . Nov. 3	Motions and Causes.
Tuesday . . . 4	{ (Petition-day) Pleas, Demurrers, Exons, Causes, and Fur. Dirs.
Wednesday . . . 5	
Thursday . . . 6	{ Pleas, Demurrers, Exons, Further Directions, and Causes.
Friday . . . 7	
Saturday . . . 8	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 10	
Tuesday . . . 11	{ Pleas, Demurrers, Exceptions, Further Dirs. and Causes.
Wednesday . . . 12	
Thursday . . . 13	{ Motions and Ditto.
Friday . . . 14	
Saturday . . . 15	{ (Petition-day) Pleas, Demurrers, Exons, Causes, and Fur. Dirs.
Monday . . . 17	
Tuesday . . . 18	{ Short Causes, Petitions, (unopposed first,) and Causes.
Wednesday . . . 19	
Thursday . . . 20	{ Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Friday . . . 21	
Saturday . . . 22	{ Motions and Ditto.
Monday . . . 24	
Tuesday . . . 25	{ (Petition-day) Pleas, Demrs. Exons, Further Directions and Causes.

## CHANCERY CAUSE LISTS.

### Master of the Rolls.

Michaelmas Term, 1845.

#### JUDGMENTS.

Attorney-General v. Mayor of Plymouth.  
Lord Nelson v. Lord Bridport, exons.  
Marquis of Hertford v. Count de Zechy, demr.

#### PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, 6 pleas.  
Carmichael v. Powis, demr.  
Jones v. Skipworth, demr.  
De Tastet v. Baglie, demr.  
Jodrell v. Jodrell, demr.

#### CAUSES.

Stand over, James v. James.  
Hilary Term, Walton v. Potter.  
Langley v. Fisher.  
Hilary Term, Hope v. Hope, Same v. Same, Same v. Same.  
Till mentioned, Richardson v. Horton, Same v. Taylor, Same v. Derby, fur. dirs. and costs.  
Hilary Term, Attorney-General v. Beddingfield.  
S. O. to file suppl. bill, Hele v. Bexley, Same v. Same.  
S. O. to file suppl. bill, Gibson v. Nicol, Same v. Alsager.

Earl of Dundonald v. Norris.  
*Hilary Term, part heard*, Mqs. of Hertford v. Lord Lowther, exons.  
*Part heard*, Davenport v. Charlesworth, Charlesworth v. Manners, rehearing.  
*S. O. Short*, Parker v. Parker.  
 Campbell v. Crook, exons.  
*S. O. part heard*, Lethbridge v. Chetwoode, and petition.  
 Lord Nelson v. Lord Bridport, fur. dirs. and costs.  
*Hilary term, part heard*, Augerand v. Parry.  
*Part heard*, Bennet v. Cooper.  
 Hodgkinson v. Cooper.  
 Atkinson v. Bartrum.  
*Part heard*, Lane v. Hardwick, Same v. Good-year.  
 Price v. Price, fur. dirs. and costs.  
 Thomas v. Davies.  
 Budd v. Flowerdew, fur. dirs., costs, and petition.  
 Bradstock v. Whitley; Same v. Lediard.  
 Pelly v. Wathan, Same v. Lewis, Same v. Same.  
 Stocken v. Dawson, Same v. Same, Same v. Belcher, Same v. Wallace, exceptions, fur. dirs. and costs.  
 Barker v. Bailey, fur. dirs. and costs.  
 Butterworth v. Harvey, fur. dirs. and costs.  
 Stedman v. Burrell, exon.  
 Weekes v. Dodson, Same v. Same, Grover v. Weekes, fur. dirs. and costs.  
 Lord Nelson v. Nelson, fur. dirs. and costs.  
 Dormay v. Borradaile, exceptions, fur. dirs. and costs.  
 Rooth v. Hutchinson.  
 Harris v. Farwell.  
 Haldenby v. Spofforth, Same v. Same, Same v. Dunn, Clark v. Same, fur. dirs. and costs.  
 Donovan v. Needham, re-hearing.  
 Sparling v. Parker.  
 Attorney-General v. Newman.  
 Attorney-General v. James.  
 Leavens v. Edmondson, Same v. Limbert, Same v. Same, Same v. Same, Same v. Renton, Same v. Same.  
 Dickinson v. Rusbridger, fur. dirs. and costs.  
 Bromley v. Wright, Same v. Burrows.  
 Hooper v. Green.  
 Cross v. Kennington, Same v. Same, fur. dirs. and costs.  
 Snow v. Tilby.  
 Blake v. Blake.  
 Barker v. Wallis.  
 Passingham v. Sherborn, Same v. Same, Same v. Rowe, fur. dirs. and costs.  
 Beavan v. Gilbert, exons.  
 Heming v. Archer, Same v. Same, Same v. Same, fur. dirs. and costs and petition.  
 Kelly v. Norris.  
 Barker v. Thurnall, Same v. Graham.  
 Lecchini v. Ashley.  
 Hodges v. Harper, fur. dirs. and costs.  
 Clarke v. Tipping.  
 Golding v. Castle, Same v. Golding, Same v. Otte, fur. dirs. costs and petition.  
 Grose v. Ewer.  
 Burrell v. Baskerfield, Same v. Gasse, Same v. Lipcombe, Same v. Frampton, Same v. Kemp, Same v. Walton, exons., fur. dirs. and costs.  
 Halme v. Chitty, fur. dirs. and costs.  
 Tanner v. Dancsey, Same v. Newman, fur. dirs. and costs.  
 Attorney-General v. Clarke.  
 Benson v. Lamb, at defts. request.

Farquhar v. East India Co., Morgan v. Same, fur. dirs. and costs.  
 Seifferth v. Badham, fur. dirs. & costs.  
 Lambert v. Newark, Same v. Pike, Same v. Hall, Same v. Barton, fur. dirs. and costs.  
 Smyth v. Lowndes.  
 Sherwood v. Beveridge.  
 Bourne v. Brett, Same v. Cooksey, fur. dirs. and costs.  
 Beaven v. Gilbert, exons.  
 Gee v. Gurney, fur. dirs. & costs.  
 Petty v. Petty, Same v. Same, Same v. Hartley, Same v. Bolton, Same v. Lonsdale, Same v. Brown, Pycroft v. Petty, Same, v. Brown, fur. dirs. and costs.  
 Man v. Ricketts, Same v. Halifax, exons.  
 Yearwood v. Yearwood.  
*S. O. Short*, Attorney-Gen. v. Phipps, fur. dirs. and costs.  
 Day v. Holbrook, exons.  
 Mutthie v. Edwards.  
 Thorpe v. Duke.  
 Whitton v. Field, Same v. Williams, fur. dirs. and costs.  
 Baker v. Sowter, Same v. Same, fur. dirs. and costs.  
 Taylor v. Taylor.  
 Richardson v. Corbett, fur. dirs. and costs.  
 Nelson v. Duncombe.

## COMMON LAW SITTINGS.

Michaelmas Term, 1845.

## Queen's Bench.

MIDDLESEX.

1st Sitting (at Eleven), Tuesday . . . Nov. 4  
 And every day until the Jury are desired to attend at the  
 2nd Sitting (at Eleven.), Saturday . . . Nov. 8  
 And every day until the Jury are desired to attend at the  
 3rd Sitting (At  $\frac{1}{2}$  past Nine), Saturday . Nov. 22  
 For Undefended Causes.

LONDON.

Monday (At Twelve) . . . Nov. 24  
 Sittings for Undefended and such Defended Causes as produce no satisfactory affidavit of Merits.

In Term in Middlesex.—On the first day of each Sitting, the Undefended Remanets and New Causes with proper notice will be called on first; then six Short (completed) Causes, and the residue of them and some others will be appointed for fixed days.

After Term.

MIDDLESEX.

Wednesday (At half-past Nine). . . Nov. 26

LONDON.

Thursday (to adjourn only) . . . Nov. 27  
 Adjournment-day, Friday . . . Dec. 12  
 (At half-past Nine.)

## Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Wednesday . Nov. 12 | Friday . . Nov. 14  
 Wednesday . Nov. 19 | Friday . . Nov. 21

After Term.

MIDDLESEX.

LONDON.

Wednesday . Nov. 26 | Thursday . Nov. 27

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Thursday the 27th Nov., in London, no causes will be tried, but the court will adjourn to a future day.

### Exchange of Pleas.

In Term.

#### IN MIDDLESEX.

1st Sitting, Tuesday . . . .	Nov. 4
2nd Sitting, Tuesday . . . .	11
3rd Sitting, Thursday . . . .	20

#### IN LONDON.

1st Sitting, Saturday . . . .	Nov. 8
2nd Sitting, Monday . . . .	17
(And by adjournment,) Tuesday . .	18

#### After Term.

#### IN MIDDLESEX.

#### IN LONDON.

Wednesday . . Nov. 26 | Thursday . Nov. 27  
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

### COMMON LAW CAUSE LISTS.

*Michaelmas Term, 1845.*

#### Queen's Bench.

New Trials remaining undetermined at the end of Easter Term, 1845.

*Michaelmas Term, 1845.*

*Middlesex.*—Rogers v. Brenton.

*Hilary Term, 1844.*

*London.*—Gillett v. Whitmarsh and others.

*Trinity Term, 1844.*

*Middlesex.*—Gladman v. Plumer.

*Michaelmas Term, 1844.*

*Middlesex.*—Bennett v. Duncan; De Medina v. Grove and others; Same v. Same; The Queen v. Baron de Bode, ; Same v. Waller.

*London.*—Exley v. Tuassell; Bodmer v. Butterworth and another.

*Cornwall.*—Richards v. Symons.

*Somerset.*—Atwood v. Jolliffe and another; Doe d. Earl of Egremont v. Langdon; Alford v. Ashford.

*Bristol.*—Gale v. Lewis.

*Norfolk.*—Corporation of Thetford v. Tyler.

*Denbigh.*—Oldfield v. Dalrymple.

*Oxford.*—Exeter College v. Butler and others.

*Worcester.*—Doe d. Blayney and others v. Savage and another.

*York.*—The Queen v. Rd. Cleasby; Lockwood v. Wood; Musgrove v. Emerson.

*Durham.*—Wilson v. Anderson.

*Westmoreland.*—Webster v. Wilson.

*Liverpool.*—The Queen v. Corporation of Manchester; Wharton v. Wright; The Queen v. Liverpool and Manchester Railway Company.

*Essex.*—Doe d. Copland and others v. Burrell; Doe d. Cozens v. Cozens.

*Kent.*—Bracegirdle v. Peacock and another; Doe d. Jacobs v. Phillips and others.  
*Surrey.*—The Queen v. Sewell.  
*Glamorgan.*—Burgess v. Taff Vale Company.  
*Pembrok.*—Doe d. Butler v. Lord Kensington.  
*Radnor.*—Doe d. Woodhouse v. Powell.

*Tried during Michaelmas Term, 1844.*

*Middlesex.*—Paine v. Guardians of Strand Union.

*Hilary Term, 1845.*

*Middlesex.*—Hill v. Stratford; Wood v. Williams and another; Stinton v. Bloxham and another; Hope v. Harman and others; Davis v. Curling.

*London.*—Henzell v. Hocking and another; Bingley v. Young; Hayne v. Rhodes and others; Daniel and another v. Pedding; Thompson v. Thorn and others; Nutt v. Abrahams; Lowe v. Penn.

*Tried during Hilary Term, 1845.*

*Middlesex.*—Edden v. Brown; Hill and another v. Kendall; Parnell v. Smith and another; Same v. Same.

### THE EDITOR'S LETTER-BOX.

IN commencing our new volume, we have not deemed it advisable to adopt the suggestion made by two or three correspondents with regard to a new series. Our old and continuing friends require no change, and for the convenience of new subscribers we shall make the two volumes of each year as complete in themselves as possible.

The Fourth Part of the Analytical Quarterly Digest will be published the week after next, and complete the volume for this year. The future parts will be incorporated with the Legal Observer at the earliest convenient periods,—arranged in the several departments of Common Law, Equity, Bankruptcy, Criminal Law, Ecclesiastical Law, and appeals to the House of Lords and Judicial Committee.

We are obliged to a correspondent for his remarks on the case of *Smith v. Dickenson*, 30 L. O. 472, and venture to hope that the effect of the remark as to Mr. Justice Coleridge's dictum will be to induce circumspection and not to mislead. We concur with our correspondent that a certificate for speedy execution for the whole amount found by the verdict, in general and unrestricted terms, like that of Mr. Baron Parke in *Smith v. Dickenson*, "includes everything;" but where the certificate is for a part only of the sum found by the verdict, (which is frequently the case where the verdict is for a large amount,) then we apprehend, that according to Mr. Justice Coleridge's suggestion, the costs should be taxed and judgment signed in the same manner as if the certificate was for the whole amount, but that execution should issue only for a part, according to the terms of the certificate.

Some interesting Legal Biographies are in preparation.

We are obliged to a subscriber at Portsmouth. The fees of clerks of assize, &c., abolished by the 8 & 9 Vict. c. 114, are the fees of clerks appointed after the passing of that act. See the clause, *verbatim*, p. 417 of the last volume.

# The Legal Observer.

SATURDAY, NOVEMBER 8, 1845.

—"Quod magis ad nos  
Pertinet, et noscire malum est, agitamus."

HORAT.

## STATE OF BUSINESS IN THE SUPERIOR COURTS.

In our last number, being the first of a new volume, we took a rapid review of the projects which it may be anticipated will be discussed, in the next session of parliament, for the further alteration of the law. We shall now notice the business which remained to be decided in the several courts at Westminster on the first day of term.

In the last and the present number will be found, as usual, the lists of causes in all the courts. From these, and other sources of information, we are enabled, we believe, to give an accurate summary of the business remaining for argument and decision in each court; and we shall compare it with the amount of arrears which existed a few years ago.

In the equity courts we find the business to be as follows:—

### Before the Lord Chancellor :

Appeals . . . . .	51
Of which we find marked to stand over . . . . .	1
	50

### Before the Master of the Rolls :

For judgment . . . . .	3
Pleas and demurrers . . . . .	5
Causes, fur. dirs. and costs . . . . .	137
	145

Of these the cases to stand over  
*sine die* are . . . . . 9

And others stand over till Hilary  
Term . . . . . 7

14  
129

Of these 6 have been part heard; and no less than 50 appear to depend on the same decision, which might therefore be deducted from the gross number.

VOL. XXXI. No. 922.

In the *Vice-Chancellor of England's* cause list there are :

Pleas, dems., causes, and fur. dirs. . . 75

Of which about 11 depend on the same decision. And there are also included 4 short causes.

The cause list of the *Vice-Chancellor Knight Bruce* is very small, viz. :

Causes, fur. dirs. and exceptions . . 23  
Including 3 depending on the same point.

The *Vice-Chancellor Wigram's* list is also very moderate, namely :

Causes, fur. dirs. and exceptions . . 28  
Including 5 which depend on the same point, and 2 short causes.

The total number of cases, therefore, at the commencement of the term, in all the five Courts of Chancery, was 305. Even this number must not be considered as an *arrear* of business, because a large proportion consists of new causes, which have been set down since Trinity Term.

This is a remarkable contrast with the former state of things. Looking back to the arrears seven years ago,\* we find that the number of causes in the courts of equity were:—

Before the Lord Chancellor . . . . .	67
Vice-Chancellor . . . . .	379
Rolls . . . . .	266
Exchequer Equity . . . . .	64
Court of Review . . . . .	32

808

These were the results after deducting all the cases which had abated or stood over.

Practitioners are agreed, we believe, that a moderate arrear of causes is not objectionable. It is not till a cause is actually entered, that all the parties, and their counsel and solicitors, set about in earnest to complete their preparations for the hearing; and it is not desirable that a cause should be forced on without due

\* See 17 L. O. 18. (Nov. 1838.)

consideration. We conceive, therefore, that the state of the equity cause paper is as clear and satisfactory as can be desired. This result is ascribable in a very material degree to the appointment of the two additional Vice-Chancellors, and the exertions they make in the despatch of business. The other judges also, though not so overwhelmed as they were formerly, find full exercise for their eminent judicial powers throughout the legal year.

The delays in the masters' offices, and the defective mode of proceeding there, are now the practical grievances in Chancery. A cause can be heard quite as speedily as is desirable; but after it has been heard, and various inquiries referred to the master, then come impediments in the way as great and numerous as ever. One of the remedies, which common sense dictates, should be tried at once: warrants, instead of being limited to a single hour, (one half of which is usually lost,) should be granted for several hours in succession, so that some effectual progress might be made. It is probable, also, that there ought to be an increased number of competent clerks, subordinate to the chief, but yet efficient.

We now proceed to the state of business in the common law courts, where the arrears have been greatly diminished, though not to the same comparative extent as in the courts of equity:—those of the Queen's Bench being still of considerable amount. In that court, however, it must be remembered that much new business has been created by recent acts of parliament; and until an arrangement be made for a more equal distribution of business amongst the common law courts, the pressure on the Court of Queen's Bench will necessarily continue. It should be recollected, however, that at certain times in each year the Common Pleas is occupied by the new cases arising on appeal from the decisions of the revising barristers.

#### In the Queen's Bench :

##### New Trials.

In Michaelmas Term, 1843	. 1
Hilary, 1844 . . . .	. 1
Trinity, 1844 . . . .	. 1
Michaelmas, 1844 . . .	. 32
Hilary, 1845 . . . .	. 16
Easter, 1845 . . . .	. 59
Trinity, 1845. . . .	. 7

New trial cases argued and remaining for judgment . . . .	8
Special cases . . . .	13
Demurrers . . . .	43
	<hr/> 56
For judgment . . . .	10
Enlarged rules . . . .	32
Crown paper . . . .	9

Total cases before the Queen's Bench . 232

#### In the Court of Common Pleas :

Enlarged rules . . . . 2

##### New Trials.

Easter Term, 1845 . . . .	1
Trinity, 1845 . . . .	2
	<hr/> 3
Cur. adv. vult. . . .	4
Special arguments . . . .	13

Total cases before the Common Pleas 22

#### In the Eschequer of Pleas :

For judgment . . . .	2
Special cases . . . .	3
Demurrers . . . .	8
	<hr/> 11

##### New Trials.

Hilary Term, 1845 . . . .	1
Easter, 1845 . . . .	4
Trinity, 1845 . . . .	2
	<hr/> 7
Peremptory paper . . . .	1

Total cases before the Exchequer . 21

Thus the total number of cases before the common law courts is 275.

Turning now to the state of matters in Michaelmas Term, 1838,<sup>b</sup> we find that in the courts of common law the arrears were :—

In the Queen's Bench . . . .	395
Crown side . . . .	17
Common Pleas . . . .	72
Exchequer of Pleas . . . .	26
	<hr/> 510

Then the causes remaining, at the commencement of the present term, to be tried at Nisi Prius are as follow :—

#### In the Queen's Bench :

London, Special juries . . . .	27
Common juries . . . .	4
Middlesex, Special juries . . . .	39
Common juries . . . .	70

#### In the Common Pleas :

London, Special juries . . . .	19
Common juries . . . .	6
Middlesex, Special juries . . . .	3
Common juries . . . .	0

<sup>b</sup> See 17 L. O. 18.

In the *Exchequer* :

London, Special juries . . .	10
Common juries . . .	3
Middlesex, Special juries . . .	3
Common juries . . .	0

184

In former times this arrear was three or four times the amount ; and the diminution must be in a great degree ascribed to the large mass of business which, by recent alterations in the law, has been withdrawn from the superior common law courts.

We may take this occasion to express a hope, that the course pursued by the present Chief Baron in the arrangement of the special and common juries, will be adopted by the Chiefs of the other courts, namely, by abolishing the practice of adding to the daily list of special juries, a certain number of common juries, in order that, if time remain, the latter may be tried. The consequence of this is, that great expense, day by day, is incurred by the attendance of the parties, their attorneys and witnesses.

Another topic may also here not inappropriately be glanced at:— There should be no *compulsory references*. If it be necessary to save the time of the court by sending cases involving complicated accounts, or other details, to the decision of an arbitrator, this should be done at an early stage of the cause. For this purpose, an act of parliament would of course be requisite. But there is scarcely a greater grievance in the administration of justice, than permitting parties to incur the expense of briefs and witnesses, and then compelling them to refer the question to arbitration.

## NOTES ON EQUITY.

## CORPORATION FRAUDS.—CORRECTIVE AND REMEDIAL JURISDICTION OF THE COURT OF CHANCERY.

LORD CHANCELLOR *Cottenham*, by his decisions, has done much to settle the law respecting frauds perpetrated by the governing bodies of municipal incorporations. In 1837, soon after the passing of the Municipal Reform Act, he determined, *Attorney-General v. Aspinall*, 2 Myl. & Cr. 613, that what is called the "Borough Fund" is not only subject to a public trust, but is in all legal respects to be regarded as in the nature of a charity. He

also ruled (which indeed seemed a necessary consequence) that this "Borough Fund," and the rights of the inhabitants, were not limited, for their protection, to the special remedies contained in the act, but might, like other public charities, be redressed and vindicated in the Court of Chancery, at the suit of the Attorney-General, by way of information, on behalf of the inhabitants.

Since the date of the decision in this case of the *Attorney-General v. Aspinall*, another point has been held to be settled — although not very prominently announced in the judgment—namely, that the Municipal Reform Act had not the effect of putting an end to existing corporations ; it merely reformed them, by the introduction and establishment of an improved system of election and administration. The existing municipal corporations of England, therefore, are now the same bodies which were in being before the passing of the act.

Having regard to these propositions, let us now direct attention to another remarkable corporation case, which came before Lord *Cottenham* in 1840, that of the *Attorney-General v. Wilson*, of which the circumstances were very singular, having been shortly these:—

In the reign of Charles II., the inhabitants of the town and parish of Leeds, and their successors, were created a body corporate, whose governing functionaries, a mayor, twelve aldermen, and twenty-four assistants, were invested with the usual municipal authority.

In 1835, the property of this corporation consisted of 6,500*l.* 3 per cents, and 500*l.* due upon certain turnpike bonds.

Viewing with apprehension the plan announced at this period for the general reform of municipal corporations, the mayor, aldermen, and assistants of Leeds held a court on the 30th May, at which it was resolved to transfer the corporate funds to three trustees, in order to deprive "this corporation of all power and control over the same." On that day, also, deeds were executed under the corporation seal, purporting to assign the two sums to these trustees, "for their absolute use and benefit."

On the 4th of July, a memorial, signed by the mayor and nineteen members of the common council, was addressed to the trustees, requesting that the funds might be appropriated to certain purposes specified in the memorial ; and on the 17th of July, 6,500*l.*, consols, were transferred to the names of the trustees in the books of the Bank of England.

Such was the state of matters when the Municipal Reform Bill passed into law, on the 19th of September, 1835.



It further appeared, that on the 24th of November, in the same year, the old governing body continuing still in power, till the new council were elected under the act, certain deeds were executed between the parties, declaratory of the objects for which the funds had been assigned to the trustees; of which objects it is enough to say, that they were objects inconsistent with the trusts created by the statute. Those objects were, to pay 500 guineas as a douceur to the recorder of Leeds, as well as 100 guineas to the deputy recorder, and to apply the residue of the monies in question in augmentation of certain charities in the town. It was not suggested that any personal advantages were to be gained by the parties to the deeds: the whole scheme seems to have had nothing in view but to prevent the corporation funds from coming into the hands of the new governing body to be elected under the act,—a species of pious juggle which met with little favour from Lord Cottenham.

Accordingly, soon after the election of councillors under the act, legal proceedings were resolved upon; and on the 14th June, 1836, an information and bill was filed, for the recovery of the property, against five of the corporate members, against the three trustees, and against certain other parties who were to have derived benefit from the arrangement about to be impeached.

After general argument, the Lord Chancellor Cottenham, on the 17th December, 1840, decided,—

1st. That the trust assignment of the 30th May, 1835, was an assignment without consideration, not made for the purpose of giving the property to the trustees, but for other purposes which never took effect; and therefore that the trust would continue for the benefit of the assignors, in other words, for the benefit of the corporation.

2ndly. That the sums in question being still the property of the corporation, became affected with the trusts declared by the Municipal Act, and consequently all attempts at alienation, for purposes inconsistent with the objects of that act, were illegal and void. The deeds, therefore, executed on the 24th November, and the attempts made to bestow the property in pursuance of them, being all subsequent to the passing of the act, with notice of the trusts contained in it, and being purely voluntary and without consideration, fell at once to the ground;—so that a decree for restoration was pronounced, “as a matter quite of course,”—his lordship observing, that for the purpose of recalling the property, no distinction was to be drawn between what remained in the hands of the trustees and what had passed into the hands of other parties who were made defendants.

3rdly. In consequence of the former determination by Lord Cottenham, that the identity of municipal corporations continued notwithstanding the statute, it was objected that the plaintiffs in the present case were themselves parties to the breach of trust of which they

complained. With reference to this objection, the Lord Chancellor observed, that in the great majority of suits instituted in this court for the rescission of transactions, it is the act of the party himself which he seeks to rescind. He admits that the act is his own; but he demands redress because he has been led into it by the misconduct of those who had the management of his affairs. Why should not a corporation have the same right to complain and seek redress where its governing functionaries fail to preserve its property and neglect to protect its interests?

4thly. Another objection urged was, that the acts of the defendant corporators were *corporate acts*, not to be questioned at the suit of the corporation, and in respect of which individual members of that body were protected from impeachment. But the Lord Chancellor regarded the governing body merely as trustees or agents of the corporation, and held them in that character responsible to the corporation for all wrongs effected in its name by an abuse of their authority.

5thly. It was also urged, that the whole governing body, or at least all who took any part in these transactions, ought to have been made co-defendants. Lord Cottenham, however, held, that in cases of this sort, where the liability arises from the wrongful act of the parties, each is liable for all the consequences. Each case is distinct, depending upon the evidence against each party; and there is no contribution. This objection, therefore, was overruled.

It is to be observed, that the corporation of Leeds is composed of the inhabitants of the town and parish; every one of whom had an interest in the corporate funds for his exoneration, *pro tanto*, from the borough rate. The governing body, properly speaking, do not constitute the corporation, they are merely the agents and trustees of the corporation.

It is true, as before observed, that since the passing of the Municipal Reform Act the property of municipal corporations has become subject to public, or what, in the legal sense of the term, are called charitable trusts; for the vindication of which the Attorney-General may interfere by information. But if, before the act passed, a corporation might in a proper case institute a suit as plaintiffs by way of bill, for the purpose of setting aside a transaction fraudulent against it, though carried on in its name, that right, upon the principle of the above case, cannot be affected by the Attorney-General having also a power to challenge the transaction, in his public character, by way of information.

In the last number of Mr. Beavan's Reports, vol. 7, p. 176, a case appears, *The Attorney-General v. The Corporation of Leicester*, which shows that Lord Langdale, M. R., is well disposed to follow the example of Lord Cottenham, in repressing

with a strong hand the frauds of corporations. That case was as follows:—

Certain benefactors had anciently given to the corporation of Leicester considerable sums of money, upon a charitable trust to appropriate the income in making loans to young men, without interest, to set them forward in the world and to encourage their industry. But what did the worthy corporation do? Why, they allowed their town clerk to retain the money,—he, however, paying interest to the mayor for the time being,—in utter disregard of the trust imposed by the authors of the charity. This was before the passing of the Municipal Reform Act. When that act came into operation, the town clerk had in his hands nearly 6,000*l.* of this money. The new governing body appointed a new town clerk. The old one demanded compensation. Upon this state of matters, the Attorney-General filed an *ex officio* information to vindicate the charity, and the case came on for judgment at the Rolls. The town clerk contended that he was entitled to set off his claim of compensation for the loss of his office against the demand made upon him on behalf of the charity. But what said Lord Langdale? His lordship thus expressed himself: “I am very much surprised at the points which have been raised here; nothing being more clear than the principle on which the court proceeds. In the first place, it cannot be disputed, that if the agent of a trustee, whether a corporate body or not, knowing that a breach of trust is being committed, assists in that breach of trust, he is personally answerable, although he may be employed as the agent of the person who directs him to commit that breach of trust. What have the corporation done here? Not superintending the employment of the money as they ought to have done, but permitting the mayor, or the agent of the mayor, as it is said, (though this was the agent also of the corporation,) to employ the money as they pleased. The corporation of Leicester, whose servant, it is said, the mayor was for this purpose, ought vigilantly to have watched the employment of that money. There has been a plain neglect on their part, and they and the town clerk are answerable to repair this breach of trust.”

These decisions show, if proof were wanting, the utility of courts of equity;—for whatever garb or shape fraud may assume, it will be visited by those tribunals by a machinery which can neither be resisted nor eluded.

#### BANK NOTE, HOW FAR INVOLVING A SEVERAL LIABILITY.—PRACTICE.

Upon the bankruptcy of the Leicester Bank, a gentleman, who held several of their notes, raised the question, whether he was entitled to prove against the separate estate of Richard Mitchell, one of the firm; the notes respectively being in the following terms:—

“Leicestershire Bank. £5. I promise to pay the bearer, on demand, five pounds, here or at Messrs. Williams, Deacon, Labouchere, Thornton, & Co., bankers, London, value received. For John Clarke, Richard Mitchell, Joseph Phillips, and Thomas Smith. Richard Mitchell.”

The commissioner admitted the proof, relying upon *Hall v. Smith*, 1 B. & C. 407; but the Court of Review expunged it, holding that the case was the same as that of a Bank of England note, upon which no one ever dreamt of suing the cashier of that establishment individually.

Upon an appeal to the Lord Chancellor, by way of special case, his lordship, see 1 Phil. 562, although it did not appear that such a thing had ever been done in bankruptcy, seemed disposed to think that he had power to send a case for the opinion of a court of law; which he thought would be the proper course, as he should feel great difficulty in overruling a decision of the Court of Queen’s Bench; although, on the other hand, he should hesitate to act on the authority of that decision, as he still retained the impression which he had taken at the outset, namely, that the note imported no more than a joint promise and liability, and did not warrant the admission to prove as against the separate estate.

#### POINTS IN COMMON LAW.

##### ARREST OF PRIVILEGED PERSON BY SHERIFF, NOT ACTIONABLE.

THE question whether the arrest of a person temporarily privileged is the subject of a civil action against a sheriff or his officer, was lately discussed in the Court of Exchequer Chamber, in a case\* in which the judgment of the Court of Queen’s Bench was reversed.

It appeared, that by an order of the Court of Review, in the matter of one Henry Charles Curlewis, against whom a fiat in bankruptcy had issued, it was referred to William Scrope Ayrton, Esq., an officer of the Court of Bankruptcy, to inquire and state whether any debt was due from the said H. C. Curlewis to the plaintiff (Burt) in the court below; that Burt was duly summoned by the said W. S. Ayrton to appear before him at the office of the registrar in bankruptcy to be examined, and that after he had attended, and whilst he was leaving the registry office for the purpose of returning to his place of abode, he was arrested by the defendant Walter, an officer of the sheriff of Middlesex, by virtue of a writ of *ca. sa.* directed to the defendants Magnay and Rogers, as sheriff of Middlesex. It further appeared, that the Court of Review afterwards

\* *Magnay, Rogers, and Walter v. Burt*, (in error,) 5 Q. B. 381.

ordered, that Burt should be discharged out of the custody of the sheriff of Middlesex, and that the defendants Magnay and Rogers detained him in custody for some hours after they had notice of such order. Under these circumstances, Burt brought an action on the case against the sheriff and their officer, and obtained a verdict, with 25*l.* damages. An application was then made to the Court of Queen's Bench to arrest the judgment, on the grounds on which the writ of error afterwards proceeded; but the Court of Queen's Bench was of opinion, that an action on the case lay, as it appeared that the sheriff had maliciously and knowingly transgressed his duty.

It was admitted, in the argument in the Court of Error, as settled by the cases of *Cameron v. Lightfoot*<sup>b</sup> and *Tarlton v. Fisher*,<sup>c</sup> that an action of trespass and false imprisonment was not, under the circumstances, maintainable, but the question stated in the latter case by Lord Mansfield,—“whether, if the defendants had done anything oppressive, with full notice of all the circumstances, an action on the case might not be maintained?” was pressed upon the court; and it was argued, that the allegation in the declaration of knowledge on the part of the sheriff, showed that the arrest was malicious, and that a malicious arrest is the proper subject of an action on the case.

The Court of Exchequer Chamber expressly decided, that the arrest by the sheriff, under a writ from any of the Queen's courts, of a person privileged from arrest by reason of attendance as a witness under the process of another court, does not form the ground of any action at law. This decision proceeded on the principle, that the privilege, the breach of which was the subject of complaint, is not to be considered the privilege of the person attending the court, but of the court which he attends; and therefore the allowance or disallowance of the privilege is discretionary.<sup>d</sup>

The difficulty which the sheriff must have in determining whether the privilege set up by the person arrested was founded in truth, added to the circumstance, that even though the sheriff knows the party to be privileged, he cannot be certain that he means to claim this privilege, were additional reasons for holding that an action will not lie; and all those reasons applied as well to one form of action as another. In ancient times, the only mode of redress was by suing out a writ of privilege; and in modern times, by a summary application to the court. This application provides both for the case where the sheriff innocently

or in ignorance of the privilege arrests the witness, and where he maliciously, and with knowledge of the privilege, makes the arrest: in the one case the court simply discharging from the custody of the sheriff, in the other, punishing for a contempt; but in both cases considering the privilege as that of the court, and not as the privilege of the party.

With respect to the alleged detention of the plaintiff, after the Court of Review had ordered his discharge, and the sheriff had notice of that order, if it was the ground of any action, which the Court of Exchequer Chamber thought was very questionable, the proper form of such action must be, trespass and false imprisonment, and not case. Supposing the Court of Review to have power to order the plaintiff's discharge from custody, the further detention, without any writ to justify it, became a new trespass and false imprisonment, in the same manner as if there had been a new caption. Had the plaintiff declared in trespass, and the sheriff justified under the writ of *ca. sa.*, the plaintiff might have new assigned the illegal detainer after the order of the Court of Review, as the trespass and imprisonment of which he complained.

Upon the grounds that the original arrest was not the subject of any action, and the subsequent detainer, if it was the subject of any action, was at all events not the subject of an action on the case, the judgment entered for the plaintiff was reversed.

#### AN ATTORNEY OF TWO COURTS MAY BE SUED IN EITHER.

The question, how far the privilege to be sued in his own court, was applicable to an attorney who happened to be an attorney of the court in which he was sued and also an attorney of another court, arose in a late case\* upon demurrer.

The defendant, being sued in the Exchequer, pleaded, in abatement, his privilege as an attorney of the Queen's Bench, not averring that he was not an attorney of the Court of Exchequer. The plaintiff replied, that the defendant was an attorney of the Court of Exchequer; and the defendant demurred.

The court determined, that an attorney of two courts may be sued in either, — otherwise he might escape being sued altogether. The privilege of an attorney of two courts consisted in his not being sued in a third court, of which he is not an attorney. There was, therefore, a judgment of *respondent ouster*.

It may safely be inferred, after this decision, that an attorney whose name is on the records of all the superior courts, may be sued in any of them, and that his privilege consists in his exemption from

<sup>b</sup> 2 W. Bl. 1190.

<sup>c</sup> 2 Doug. 671.

<sup>d</sup> The privilege has been disallowed where the party attends voluntarily and not upon process, and where the attendance is not *bona fide*. 11 Mod. 79; *Meekins v. Smith*, 1 H. Bl. 636.

\* *Walford v. Fleetwood*, Law J. 271, Exch.

being sued in an inferior court, to the jurisdiction of which attorneys are not specially subjected by some provision in the act establishing the court.

## THE STAMP ACT OF THE LAST SESSION.

### LEGACY DUTIES.

8 & 9 Vict. c. 76.

THERE is an important clause in this act relating to the legacy duty on gifts by will or testamentary instruments,—whether by way of annuity or any other form, or donations *mortis causa*,—which are now to be deemed legacies, with an exception in favour of appointments under marriage settlements. We give the clause verbatim, with an analysis of the others.

An act to increase the Stamp Duty or Licences to Appraisers; to reduce the Stamp Duties on Registry Searches in Ireland; to amend the Law relating to the Duties on Legacies; and also to amend an Act of the last Session of Parliament, for regulating the Issue of Bank Notes in England. [4th Aug. 1845.]

1. Reciting the 55 G. 3, c. 184; 5 & 6 Vict. c. 82; 8 & 9 Vict. c. 2. Stamp duty on appraisers' licences repealed, and an increased duty thereon granted in lieu.

2. Stamp duties payable in Ireland on registry searches repealed, and reduced duties granted in lieu thereof.

3. Powers and provisions of former acts to be applied to the duties granted by this act.

4. *Certain gifts by will or testamentary instrument to be deemed legacies.*—And whereas under or by virtue of the said several recited acts, certain duties have been granted and are now payable in Great Britain and Ireland respectively upon legacies, and doubts have been entertained whether certain gifts by will or testamentary instrument are legacies liable to the said duties, and it is expedient to remove such doubts; be it therefore enacted, That from and after the passing of this act every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable, or shall have effect or be satisfied out of the personal or moveable estate or effects of such person, or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of, or which gift is or shall be payable or shall have effect or be satisfied out of or is or shall be charged or rendered a burden upon the real or heritable estate of such person, or any real or heritable estate, or the rents or profits thereof, which such person hath had or shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any monies to arise by the sale, burden, mortgage, or other disposition of any such real or herit-

able estate, or any part thereof, whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a donation *mortis causa*, shall be deemed a legacy within the true intent and meaning of all the several acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly: Provided always, that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons, shall be liable to the said duties on legacies under the will in which such sum is or shall be appointed or apportioned in exercise of such limited power.

5. Provision for recovery and application of penalties under 7 & 8 Vict. c. 32.

## CHANCERY TIME TABLE.

WE noticed last week the new edition of Mr. Kennedy's Code of Chancery Practice, including the Orders of the 8th May, with explanatory notes, and extracted part of the very useful Time Table, which is given as well in the index as in a separate chart for office use. We now lay before our readers a further extract, beginning with *Subpœna* and ending with *amending Bill* inclusive.

### 3. SUBPŒNA.—Time for serving.

Within twelve weeks after the teste (except for costs . . . . . Ord. 16, Art. (1).

### 4. COPY BILL.—Time for serving.

Under the 23rd Order of Aug., 1841, within twelve weeks from the filing of the bill.

Ord. 16, Art. 2, & Ord. 28.

After that time leave may be obtained without notice . . . . . Ord. 28.

### 5. APPEARANCE BY DEFENDANT.

*Defendant must appear within eight days after service of subpœna within the jurisdiction.*

Ord. 16, Art. 3, & Ord. 22.

*Within the time limited by order inserted in London Gazette, or such further time as the court appoints, where he has absconded to avoid service of process . . . . . Ord. 31*

*Within the time limited by order, where served with subpœna and order out of the jurisdiction.*

Ord. 33, Art. (2).

Within twelve days after service of copy bill, after that time leave must be obtained on notice of motion . . . . . Ord. 16, Art. (5), & Ord. 37.

### 6. APPEARANCE BY PLAINTIFF FOR DEFENDANT.

Plaintiff may appear for defendant, not being an infant or person of weak or unsound mind, without order after eight days, and within three weeks after service of subpœna within the jurisdiction . . . . . Ord. 16, Art. (4), & Ord. 29.

After three weeks from service of subpœna

within the jurisdiction, plaintiff must obtain an order for leave to appear for defendant. Ord. 29.

An order for defendant to appear, obtained on evidence of defendant absconding to avoid service, may be inserted in London Gazette and otherwise published as the court directs within fourteen days after order made; and plaintiff may obtain an order for leave to appear for defendant after the time limited by such order, or such further time as the court appoints.

Ord. 31.

Plaintiff may obtain an order for leave to appear for a defendant served out of the jurisdiction after the time limited by the order for appearing

Ord. 33, Art. (4).

(See also *Contempt Act*.)

#### 7. ASSIGNING GUARDING.—For want of Appearance.

Plaintiff may obtain an order to assign guardian to appear for infant or person of weak or unsound mind, on a notice of motion served six clear days before the day named in the notice for hearing the motion.

Ord. 16, Art. (48), & Ord. 32.

#### 8. COMMON INJUNCTION.

Plaintiff may obtain an order for, for want of appearance, after eight days from the service of the subpoena

Ord. 59.

For want of answer eight days after appearance

Ord. 59.

#### 9. ORDER TO REVIVE.

May be obtained as of course, after eight days from appearance by defendant and no plea or demurrer

Ord. 61.

On notice of motion after eight days from appearance by plaintiff for defendant and no plea or demurrer

Ord. 62.

#### 10. EXCEPTIONS FOR SCANDAL OR IMPERTINENCE.

Order of reference to be obtained within six days after exceptions filed.

Ord. 16, Art. (6), & Ord. 39.

Report to be obtained within fourteen days from date of order of reference, or such further time as the Master allows.

Ord. 16, Art. (7), & Ord. 40.

Exceptions to report to be filed, set down, and order for setting down served within four days after report filed. Ord. 16, Arts. (8) & (9).

Scandalous or impertinent matter to be expunged after four days from filing report, if no exceptions filed thereto.

Ord. 16, Art. (8), & Ord. 41.

#### 11. DEMURRING ALONE.

Defendant to demur alone, within twelve days after appearance, (see time for plaintiff to set down demurrer, *infra*, 16.) Ord. 16, Art. (10).

#### 12. PLEADING, ANSWERING, OR DEMURRING, NOT DEMURRING ALONE.

Defendant to plead, answer, or demur, not demurring alone, to prevent common injunction within eight days after appearance.

Ord. 16, Art. (11), & Ord. 59.

To plead or demur, to prevent order to revive within eight days after appearance.

Ord. 16, Art. (12), & Ord. 61.

To plead, answer, or demur, not demurring alone, to an original or supplemental bill, within six weeks after appearance.

Ord. 16, Art. (13):

To bill amended before answer, within six weeks after notice of amendment served.

Ord. 16, Art. (14):

To answer amendments and exceptions together, within four weeks after service of notice of amendment of the bill. Ord. 16, Art. (15).

To plead, answer, or demur, not demurring alone, to amended bill where no further answer required, within eight days after notice of amendment served

Ord. 16, Art. (38).

No warrant for time to be granted after such eight days

Ord. 71.

Where subpoena to answer bill amended after answer served, within four weeks after appearance thereto

Ord. 16, Art. (16).

(For time to answer Exceptions for insufficiency, see *Exceptions for Insufficiency*, 22.)

#### 13. ASSIGNING GUARDIAN.—For want of answer.

Plaintiff may move to assign guardian to infant or person of weak or unsound mind, for want of answer, on a notice of motion served six clear days before the day named in the notice for hearing the motion.

Ord. 16, Art. (48), & Ord. 32.

#### 14. DEFENDANT ATTACHED FOR WANT OF ANSWER.

Plaintiff must bring up defendant, if in custody of serjeant-at-arms or messenger, within ten days after he is taken into custody.

Ord. 73.

If in prison, within thirty days from the time of his being in custody or attachment lodged where already in custody

Ord. 74.

Defendant discharged in default of plaintiff bringing him up, must answer within eight days after his discharge.

Ords. 73 & 74.

(See also *Contempt Act*.)

#### 15. TAKING BILL PRO CONFESSO.

Plaintiff may, within three weeks after the execution of an attachment, serve notice of motion for taking bill *pro confesso*, against defendant attached for want of answer, on some day not less than three weeks after service of such notice

Ord. 16, Art. (49), & Ord. 76.

Plaintiff may serve notice of motion, for taking bill *pro confesso*, against a defendant deemed to have absconded who has appeared on some day not less than fourteen days after service of such notice

Ord. 78.

Plaintiff may insert notice of motion in the London Gazette, for taking bill *pro confesso* against a defendant deemed to have absconded for whom the plaintiff has appeared on some day not less than four weeks after first insertion of such notice

Ord. 79.

**16. SETTING DOWN DEMURRER.**

Plaintiff to set down demurrer to the whole bill, within twelve days after demurrer filed.

Ord. 16, Art. (17), & Ord. 46.

To part of the bill, within three weeks after demurrer filed. Ord. 16, Art. (18), & Ord. 47.

**17. SETTING DOWN PLEA.**

Plaintiff to set down plea within three weeks, after plea filed. Ord. 16, Art. (19), & Ord. 49.

**18. FILING REPLICATION.—After undertaking to reply.**

Plaintiff having undertaken to reply to plea, to file replication within four weeks after date of undertaking. Ord. 114, Art. (2).

**19. SETTING DOWN CAUSE ON OBJECTION FOR WANT OF PARTIES.**

Plaintiff to set it down within fourteen days after answer filed. 26th Aug. 1841, Ord. 39.

**20. DISSOLVING COMMON INJUNCTION.**

Order nisi to be served two clear days before day for showing cause. 3rd Ap. 1828, Ord. 23.

**21. ORDER TO ELECT.**

Defendant may obtain an order for plaintiff to elect, *where answer not excepted to* or referred on former exceptions, upon the expiration of eight days after answer filed.

8th May, 1845, Ord. 16, Art. (20).

*Where answer excepted to* or referred on former exceptions, within four days after service of notice, requiring the plaintiff to obtain report on exceptions, if report not obtained within that time. Ord. 16, Art. (21), & Ord. 51.

**22. EXCEPTIONS FOR INSUFFICIENCY.**

Plaintiff may file within six weeks after answer. Ord. 16, Art. (22).

Defendant must submit to, within eight days after the filing, to avoid a reference.

Ord. 16, Art. (23).

*Defendant to answer* where, not being in contempt, he submits to exceptions *before reference* within three weeks from submission (*see below for time after order of reference*).

Ord. 16, Art. (24).

Plaintiff not to obtain order to refer, before the expiration of eight days from filing exceptions, except where notice given in a case of election. Ord. 16, Art. (25).

Plaintiff to obtain order to refer after eight days and within fourteen days from the filing.

Ord. 16, Art. (26).

Plaintiff to obtain report on, within fourteen days from date of order of reference, or reference back, or such further time as the Master allows. Ord. 16, Art. (27).

Where shown for cause against dissolving an injunction, within four days after the date of order of reference. Ord. 16, Art. (28).

In cases where a defendant seeking an order to elect, serves a notice requiring the report to be obtained, within four days from such service.

Ord. 16, Art. (21).

*Plaintiff to refer further answer on old exceptions* within fourteen days from the filing of such answer. Ord. 16, Art. (29).

*Defendant to answer* where (not being in contempt), he submits to exceptions *after an order of reference*, or the answer is found insufficient, within such time as the Master appoints. Ord. 16, Art. (30).

**23. WHEN AN ANSWER IS TO BE DEEMED SUFFICIENT.**

1st. Six weeks after answer filed.

Ord. 16, Art. (31).

2nd. If exceptions not referred in fourteen days. *Ibid.*

3rd. If report on exceptions not obtained, in fourteen days from order of reference or enlarged time. *Ibid.*

4th. Second or third answer if not referred within fourteen days after filing. *Ibid.*

5th. If report on exceptions not obtained within fourteen days from order referring answer back or enlarged time. *Ibid.*

From date of report of sufficiency.

3rd Ap. 1838, Ord. 9.

**24. FROM WHAT TIME AN ANSWER IS TO BE DEEMED INSUFFICIENT.**

From date of submission to answer exceptions. 3rd Ap. 1828, Ord. 9.

**25. OBTAINING LEAVE TO AMEND BILL.**

An order of course may be obtained before replication or undertaking to reply, within four weeks after the answer of a sole defendant, or a joint answer is deemed sufficient.

8th May, 1845, Ord. 16, Art. (31), & Ord. 66.

Within four weeks after the last of several answers is deemed sufficient.

Ord. 16, Art. (33), & Ord. 66.

**SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.**

THE first meeting of this Society for the session 1845–46, took place on Wednesday last, at eight o'clock in the evening, at the rooms of the Society in Regent Street. The Right Hon. Stephen Lushington, LL.D., in the chair. The following references were made.—To consider the Law relating to Uses and Trusts, with a view to its simplification and improvement: referred to the committee on the Law of Property. To consider the justice and expediency of the Certificate Duty now paid by attorneys and solicitors: referred to the Miscellaneous Committee.

To consider the propriety of assimilating actions brought against persons acting by virtue of acts of parliament or under any public authority: referred to the Common Law Committee.

A paper was then read on the propriety of establishing a System of Public Trusts, which was read to the Society at the request of the Equity Committee: referred back to the same

\* We would call the attention of our readers to this very just and proper inquiry.—Ed.

committee for the purpose of preparing a comprehensive plan on this subject. A paper was also read on the Law of Debtor and Creditor, which was also referred to the committee on that branch of the law.

## PRACTICE IN LUNACY.

### LUNATIC PERMITTED TO RESIDE IN SCOTLAND.

IN the exercise of that peculiar jurisdiction which is committed to the Great Seal by the royal sign manual, it is not the practice to allow the lunatic to be carried out of England. And this was the reason why the Lord Chancellor refused to entertain the petition of Dyce Sombre, 1 Phill. 436, praying to have the commission of lunacy superseded, until the individual who was the subject of it brought himself within the jurisdiction of the court, by coming over to this country from France, whither he had escaped from the custody of those who had had the care of him under the Chancellor's authority. Such is the general rule undoubtedly; from which, till the case to which we are now shortly to direct attention, there had we believe been no exception.

In the matter of *Jones*, recently reported by Mr. Phillips, vol. 1, p. 461, it appears that the committee of the lunatic presented a petition, which was supported by affidavit, stating that the lunatic, who had been for some time residing in Scotland without the permission or knowledge of the Lord Chancellor, had repaired thither with his mother; and she dying at Edinburgh in 1843, it was thought expedient afterwards to place the lunatic, (who had in the mean time become violent,) in a public lunatic establishment at Glasgow, where he had since been continued. The affidavits went on to state, further, that in this establishment the health and mental state of the lunatic had greatly and perceptibly improved, and that he derived consolation and satisfaction from the visits of his brothers and sisters, who were all resident in Scotland, either at Edinburgh or Glasgow; while, on the other hand, it was represented that while in England the unfortunate individual in question had no nearer relatives than uncles and aunts, who were but slightly known to him. And it was added, that the committee himself, who was one of these uncles, would be prevented by the state of his own health from being much with the lunatic. So that, upon the whole, the prayer was, that the lunatic, under the circumstances, might be permitted to remain in Scotland.

The Lord Chancellor, (who, we may observe, has at all times been indisposed to permit tech-

nical rules to interfere with the dictates of humanity,) observed, that although there appeared to be no precedent on the file for such an order, he should grant the permission sought, under the special circumstances of this case, provided the committee would give security for bringing the lunatic within the jurisdiction at all times when required; and upon an undertaking to comply with that condition, the order was made as prayed.

## CHARACTER AND CONDUCT OF THE PROFESSION.

It has been our duty, whilst conducting the *Legal Observer* for fifteen years, to watch the progress of public opinion in relation to the character and conduct of the profession. Prior to and at the time our labours commenced, we frequently read in the daily journals very general and indiscriminate censures of the whole body of attorneys and solicitors. Whenever a case occurred in which an attorney was exposed for misconduct or malpractice, the press treated it as a sample of the whole class. All were deemed pettifoggers, — seeking to amass costs, heedless of their clients' interests, or the miseries they inflicted on their opponents. These were the topics of declamation, not by worthless and insignificant publications only, who always pander to the taste for calumny, but by daily papers of large circulation.

From various causes, the tone of public writers in noticing the larger branch of the profession, has in this respect materially altered. The lawyers as a class are no longer deemed unworthy members of the community. The delinquents amongst them are treated, as they ought to be, as exceptions to the rule of good conduct which characterises the general body.

It cannot be disputed, that amongst ten thousand individuals, many have deviated from the path of rectitude. The marvel is, that there are so few instances of misconduct. The majority of this large body derive but small incomes from their practice, and are surrounded by temptations. From their station, they are led into considerable expense. They are entrusted with a vast extent of property; and how rare are the instances in which that trust is abused!

It is our business, equally with other journalists, to expose and censure every case of fraud and malpractice; and it is gratifying, whilst discharging this duty,

to be enabled to record the favourable opinions of our contemporaries on the conduct and character of professional men. For the present, we are glad to extract the following from *Chambers' Edinburgh Journal* for September :—

“ We still occasionally meet with individuals who entertain prejudices against whole professions, declaring, for instance, that all engaged in the law must needs be tainted with roguery. That there may be something unfavourable to general morality in the maxim which sanctions a legal man in taking up causes which he fully believes to be bad, we are not prepared to deny; that there are many despicable pettifoggers continually engaged in dirty and roguish work, cannot be doubted; but it is at the same time evident to all who can take a comprehensive view of the profession, that the great mass are men of the purest honour, while many exhibit even an unusual exactness in their dealings with their fellow-creatures. The effect of the following *true story* will be, we think, to show that honour and shame are not necessarily connected with any of the walks of life in which common prejudice expects to find them :—

“ In a certain mercantile town, which need not be named, there existed, thirty years ago, a house transacting business under the firm of B. M. H. & Co. Their trusty clerk, J. S., having been one day sent to the bank for a large sum, which was paid to him in hundred-pound notes, was returning with it, when, having gone into a shop for some unimportant purpose, he unluckily dropped one of the notes, which he did not miss till he had reached the counting-house of his employers. The junior partner of a thriving manufacturing house happened to observe it immediately after the loser departed, and, having picked it up unobserved, he showed it to his partners as a wind-fall, and they agreed to regard it as a common good, and enter it as such in their books. The loss of the note was duly advertised in the newspapers and by placard: the fact became universally known, and was as universally regretted; but no trace of it was ever discovered. The very men who had appropriated it, joined heartily in deploring the misfortune of the poor clerk, upon whom it was known that the loss would fall. When all efforts had failed, J. S. was obliged to make up the sum to his employers, out of a little fund which he had accumulated as a provision for a lunatic daughter. Worse still; the misfortune preyed upon his spirits. He fell into ill health, and soon after died, leaving a destitute family.

“ For twenty years, the trio who had divided the hundred pounds pitilessly beheld the struggles of the poor widow and her children. At length their copartnery was dissolved, and the junior partner, in consulting his legal agent, Mr. W., as to some details of that transaction, incidentally stated that he had hardly got his fair share of that hundred pound note which he had picked up twenty years ago. Little

more passed at that time; but, about three months after, Widow B., the surviving child of poor S., who had lost the note, having occasion to consult the same legal gentleman, made allusion to that circumstance as what had produced the ruin of her father's family. Struck with the coincidence of time, place, and the sum lost, Mr. W. made further inquiries, and the result was, that he recommended Mrs. B. to call upon the principal partner of the dissolved concern, and ask pointedly if a member of his house had ever found a hundred-pound bank note, and if the sum had been credited to cash in their books. The poor woman acted according to direction, and by the person to whom she applied, was ordered to quit his house, and never trouble him again on such a subject. Not daunted by this repulse, Mr. W. caused his poor *protégée* to apply to Mr. B., the principal partner of the house by which her father had been employed, requesting that he would kindly exert himself to see justice done to her. Mr. B. was a benevolent, as well as conscientious man; he had ever regretted the fate of poor S., and he now felt the deepest indignation at the trio whom, from the report of Mr. W., he believed to have appropriated the note. He applied by letter, and personally, for the restoration of the money; but met only shuffling denials and refusals. A rupture then took place between the parties, and, with Mr. B.'s concurrence, a summons was served by W. upon the three partners of the dissolved firm, narrating all the circumstances of the case, and concluding for the value of the missing note, with interest and expenses. An agent was employed in defence; and, happily, like Mr. W., he was an honest man. Mr. M. observing something suspicious in the case, assembled the three partners in his chamber, where a conversation somewhat like the following took place :—

“ ‘ Mr. M. Well, gentlemen, your defence in this case, what is it ?

“ ‘ Trio. Oh, there is no *proof* that the pursuer's father lost any note, or that we found the one he lost.

“ ‘ M. Did any of you find a Royal Bank 100l. note at the time and place stated in the summons ?

“ ‘ Trio. Ay; but what *proof* is there that it is the one he lost, if indeed he lost any note ?

“ ‘ M. Did you at the time know of the advertisements and reward narrated in the summons ?

“ ‘ Trio. Oh, we cannot remember these far-back stories.

“ ‘ M. Yes; but I see you do not deny them, and I wish to know if you yourselves advertised the finding of the note, as was clearly your duty as honest men ?

“ ‘ Trio. No; and surely there was no law of the land which obliged us to do so.

“ ‘ M. Well, gentlemen, I tell you frankly that this seems to me an ugly affair, and you had better settle it, for certainly I shall not defend you.



“ ‘Struck with the straightforward honesty of their own agent, the partners could not resist his advice. The opposite agent, Mr. W., was sent for, and asked what rate of interest he demanded. He answered to Mr. M., ‘Whatever you, sir, as agent for the defendant, think fair.’ ‘Then,’ said M., ‘I fix it at bank interest;’ and the matter was immediately settled.”

“Thus was a monstrous wrong, which had been inflicted by individuals of a class held generally in respect, redressed by the honesty and zeal of two members of a profession often spoken of as wholly predatory and vile. Could anything show us in a more expressive light the necessity of caution in applying general characters to large bodies of men?”

### APPLICATIONS FOR RENEWAL OF ATTORNEYS’ CERTIFICATES.

*On the last day of Michaelmas Term, 1845.*

#### Queen’s Bench.

Brown, T., Wheat Sheaf Yard, Farringdon St.; Newgate Market.  
Brough, John, Herne Bay.  
Barnes, Henry, Norwich.  
Bigland, Charles Ralph, Beaumont Street, Marylebone.  
Barber, Vaughan, Birmingham; and Bewdley.  
Cornish, William, Marazion.  
Costobadie, George Palliser, Husbands Bosworth.  
Colley, William, Boston; Taunton; L’Orient, France.  
D’Oyly, Robert, 2, Lyon Inn; Moreton in the Marsh; Auckland, in New Zealand; and on the high seas.  
Edmonds, John Hughes, Llandrwyfely.  
Edger, H., 1, Field Court, Gray’s Inn; and Bolwell St., Lambeth.  
Foot, Chas. Chalmers, Sturminster; Newton Castle; Marnhull.  
Forrester, Gilbert Davis, Hawk Cottage, Old Brompton.  
Grange, Richard, 24, Paddington Street.  
Hunt, Richard, 28, Great Leonard Street, Finsbury.  
Laver, George, 1, Aldhous Terrace, Barnsbury Park; and Lyminge, near Hythe.  
Littlewood, John William, Godalming.  
Marshall, J. H., 38, Gt. Dover Road; Brownlow Street; Upper North Place, Gray’s Inn Road; and St. John’s St.  
Nugee, Francis Jas., jun., Gloucester Place, Regent’s Park.  
Nightingale, Edward, Stratford-upon-Avon; and Nottingham.  
Poole, Charles Paris, 15, Penton Place, Pentonville.  
Pyke, Henry Hugh, 87, Chancery Lane.  
Stephens, Thomas, 7, Upper Queen’s Buildings, Brompton.  
Stoddart, C., 4, Garnault Pl., Clerkenwell; Upper Rosomon St.

Skinner, John, 4, Webber Street, Blackfriars Road.  
Smallwood, Brook Hector, Newport, Shropshire.  
Simson, Charles, 4, Bird’s Buildings, Islington.  
Turner, Joseph, Sheffield.  
Tyrrell, James, Milford.  
Vyner, Charles James, Ironmongers’ Hall; and Nantwich.  
Walter, Charles, 42, Southampton Buildings, Chancery Lane.  
Watson, Charles, Castleton, near Guisborough.  
Warren, Henry, Canterbury.

*To be added to the list pursuant to judges’ orders.*

Coyney, Thos. E., Weston Coyney, Staffordshire; the High Seas; Auckland, New Zealand.  
Bell, Joseph Copeland, 3, Roebuck Place, Gt. Dover Road.

The list of notices of admission for Hilary Term will be commenced in the next number.

### LAW LECTURES.

#### OUTSTANDING TERMS ACT.

THE usual courses of lectures at the Incorporated Law Society commenced on Monday, the 3rd instant. Mr. *Caley Shadwell* delivered his first lecture on the Real Property Acts of the last session. He commenced with the Outstanding Terms Act, and enlarged on the imperfections of the law which the act was intended to remedy. He then entered on the consideration of the several clauses. For the present, we are able only to state the result of the learned lecturer’s opinion, namely,—that in ordinary transactions, such as the case of a tenant in fee simple who pays off the mortgage and takes an assignment of the term, the act clearly applies: but where there is an outstanding term assigned to a trustee for the mortgagee, or where there is a trust under settlement, its application may be doubtful; and until there shall be a judicial decision on the subject, it will be expedient for practitioners, in complicated cases, to require the term to be assigned. We hope to give some notes on the further lectures on this and the other new acts.

Mr. A. J. Stephens will lecture on Mandamus, Quo Warranto, Criminal Information, Prohibition, and Evidence in Civil and Criminal Proceedings.

On the retirement of Mr. Adams, (after lecturing three years,) Mr. *Samuel Miller* has been appointed. He will treat of the exclusive jurisdiction of Courts of Equity; their discretionary power, particularly in regard to Costs; the Practice of the Court with reference to the New Orders; and the alterations effected in the Law and Practice of Bankruptcy.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Vice-Chancellor Wigram.

[Reported by J. H. COOK, Esq., Barrister at Law.]

ORDER XXXVIII., AUGUST 1841.—AMENDED BILL.—ANSWER.—INSUFFICIENCY.—DEMURRER.

*The word "demurrer," in the 38th Order of August 1841, construed as meaning any demurrer by means of which a defendant might have protected himself from discovery.*

*The master, by the 38th Order, has jurisdiction to ascertain, upon exceptions to an answer, whether a bill is demurrable.*

*The distinction between demurrers to bills for relief, and bills for discovery, pointed out.*

*In certain cases, a party may obtain an order for leave to amend, without prejudice to the exceptions.*

THE plaintiff, in May 1844, filed his original bill for the administration of a testator's estate. The defendant filed his answer in July following, admitting the will, the testator's death, and the probate, but declining to answer further, alleging that the bill was defective for want of parties, and craving the same benefit from the objection by way of defence, as though he had demurred. In October, exceptions for insufficiency were filed; and they were allowed in Michaelmas Term following. The defendant then excepted to the report. These exceptions were allowed, and the plaintiff amended his bill by adding parties. The amended bill was filed in February 1845, and was answered in March following. The amendment consisted merely of the introduction of the absent parties, and the statements and interrogatories relating thereto. The interrogatories contained in the original and amended bills were duly numbered, the defendant, the executor, being required to answer "all the matters aforesaid." He answered only such interrogatories as had been introduced in the amended bill. A motion was made on behalf of the plaintiff for leave to except to the answer to the original bill, or to go before the master upon the former exceptions, notwithstanding the order of January 20th, 1845, or that the court would make such order as it might see fit, to compel the executor to give a full and sufficient answer. This motion was dismissed with costs, as being irregular. The plaintiff thereupon filed exceptions to the answer to the amended bill, which exceptions the master allowed. The case now came before the court for argument, upon the defendant's exceptions to the master's report.

Mr. Romilly, in support of the exceptions, cited *Mazarredo v. Maitland*, 3 Madd. 66; *Ovey v. Leighton*, 2 S. & St. 234; *Glassington v. Thwaites*, 2 Russ. 488.

Mr. Stinton, contra, cited *Taylor v. Wrench*, 9 Ves. 315; *Miller v. Wheatley*, 1 Sim. 296; *Duncombe v. Davis*, 1 Hare, 193; *Baddeley v. Curwen*, (see ante, p. 144.)

July 26. Sir James Wigram, V. C., now gave judgment.—"In the cases of *Tipping v. Clarke*, 2 Hare, 383; *Drake v. Drake*, ib. 647; *Fairthorne v. Weston*, 3 Hare, 387; and *Woods v. Woods*, ib. 411; I had occasion to consider and to decide upon the construction of the 38th Order of August 1841. Since those cases were decided by me, the same question as arose in them has come before another judge, from whose opinion I seldom differ without greatly distrusting my own; and as he has put upon this order a different construction from that which I put upon it, I have felt bound, in this case, to re-consider my own decisions. The grounds I went upon in those cases were four: 1st, That the language of the 38th Order strictly interpreted required the construction there put upon it; 2ndly, That the order would be nugatory unless that construction were adopted; 3rdly, That the order was intended to have the effect given to it by that construction; and, 4thly, That the inconvenience which is, undeniably, attendant upon that interpretation of the order is not so great as to justify the court in restricting the natural meaning of the words in which the order is expressed. As to the first ground, if the defendant may, in the words of the order, 'decline answering any interrogatory, or part of an interrogatory,' he may do so as to every interrogatory in succession falling within the same objection; and the word 'demurrer,' which occurs in the order, must be held to mean any demurrer by means of which the defendant might have protected himself against discovery. I can discover no ground in the language of the order for saying that the words of the order are not so large as I understand them to be. With reference to the second ground, if the word demurrer in the order is not to be understood in the large sense in which I understand it, it must be confined to demurrers applicable only to particular interrogatories, the answer to which would subject the defendant to pains and penalties, or to a forfeiture, or to a violation of professional confidence, or would fall within the other excepted cases. But, in such cases, no such order was necessary, for the defendant, notwithstanding he might defend himself by answer, and not by demurrer or plea, might always have declined answering such questions. With regard to the third ground, it may be observed, that the 38th order was one of those suggested for Lord Cottenham's consideration, and for that of the late Mr. Sutton Sharpe and myself; and that some considerable time intervened between this suggestion and the publication of the orders. I have no means of knowing what, in the mean time, passed in Lord Cottenham's mind, but I know that the object of that part of the order was explained to him, in the first instance, and that in accordance with what I have stated in *Tipping v. Clarke*, as to the

alterations intended to be provided for by the 38th Order, it was thought at the time that alterations might usefully be made where the bill was demurrable, although the cases in which the discovery could only be covered by plea were advisedly omitted. As to the *fourth* ground, I have already anticipated and referred to all the inconveniences suggested in argument; and it may be observed, that if the defendant should put on the file, under the name of an answer, a paper writing not fulfilling the conditions of an answer, the plaintiff might in this, as in similar cases, insist upon its being taken off the file. The observation, that the effect of my construction of the order is, to deprive the plaintiff altogether of the benefit of the practice which obliges the defendant, if he demur at all to the bill, to do so within twelve days, does not appear to me to be well founded, to the whole extent to which it was argued. In cases of bills of discovery only, to some extent, the objection will apply, but not so as to bills for relief. The consequences attendant upon a demurrer to a bill of relief, and those arising out of a demurrer to a bill of discovery only, are widely different; for this reason, that in all bills praying relief, the answer being filed, the cause may be brought to a hearing at the option of the plaintiff, for if the case can be proved without a discovery from the defendant, the plaintiff may reply to the answer, and go into evidence. It was said, also, that the masters have no jurisdiction to inquire whether a bill is demurrable or not, upon exceptions to an answer. That was one of the reasons assigned by Lord Eldon why a party, who defended by answer, could not refuse to answer particular interrogatories, only because a demurrer to the whole bill, if filed in time, might have been sustained. (*Shaw v. King*, 11 Ves. 303; *Rove v. Teed*, 15 Ves. 377, 378; *Somerville v. Mackay*, 16 Ves. 382.) He said that the court was called upon to overrule the master's decision, without being in a condition to say that the master had been wrong. But if the construction of the 38th Order be that which I have supposed it to be, that order has given the master jurisdiction. The only other point which arises in the present case is this, the defendants say that the plaintiff, by amending the bill, has admitted the former answer to be sufficient, and that he cannot now take exceptions to it. The answer to this is obvious. The first bill having been amended only by adding parties, together with such charges as account for the addition, that takes the case out of the rule relied upon by the defendant. (*Taylor v. Bailey*, 3 M. & C. 647.) If it were not for the expense, I should perhaps consider the more convenient course to be that which the plaintiff pursued in *Woods v. Woods*, namely, to obtain an order for leave to amend without prejudice to the exceptions; but if the plaintiff will not pursue that course, I think the master's decision right. The reason given for not answering parts of the original bill, is stated in the answer to be, that the original bill is demurrable, and if that ob-

jection is removed by amendment, it no longer applies. The observations in *Taylor v. Bailey* clearly point out what the practice of the court must be in a case like this with reference to the 38th Order. I think, therefore, that the master was right in his view of the case; but I still think, (and that in accordance with the opinion of many others,) that if the order is to remain in operation, it would be convenient to have a supplemental order, so as to get rid of the inconveniences which certainly do exist. Another ground which was argued in support of the exceptions, and which seems to be good in part, if not to the full extent, was, that the amendment comprises new facts, to which the answer to the original bill did not apply; and therefore, that the answer to some of the interrogatories ought to have been repeated as to those new parts, and that the exceptions to the master's report being general, are clearly too large. (*Mazarredo v. Maitland*, 3 Mad. 66; *Taylor v. Bailey*, ante; *Partridge v. Haycraft*, 11 Ves. 570.) I think, therefore, that the master was right. The exceptions must be overruled. I shall give no costs of the exceptions, or of the motion. The deposit must be returned.

*Kay v. Wall*. Lincoln's Inn, July 23 & 26, 1845.

#### Queen's Bench.

(Before the Four Judges.)

[Reported by JOHN HAMERTON, Esq., Barrister-at-Law.]

#### TROVER. — CONVERSION. — LEAVE AND LICENCE.

*A., a wharfinger, delivered goods to B. by mistake, who, when the mistake was discovered had sold a portion of them, but who offered to give up the remainder, and pay a reasonable sum for those sold. Held, that under the plea of leave and licence there was a conversion, by disposing of part of the goods after the mistake had been discovered; and that the qualified property which A. had in the goods was not terminated by delivery to B. under a mistake.*

TROVER. Plea: 1. Not guilty; 2. Not possessed; 3. Leave and licence. The case was tried before Lord Denman, C. J., at the sitting in London after the last Trinity Term. The plaintiff was a wharfinger, who received certain crates of earthenware, marked in such a manner as induced him to believe they were intended for the defendant, who was a dealer in such goods. The defendant thought the crates were not intended for him, but the plaintiff said they must belong to him, and accordingly sent them to his premises. The defendant unpacked the good and had disposed of a portion of them, when the plaintiff discovered that a mistake had been committed, and that they were intended for another person. The plaintiff then requested the defendant to restore the goods, when he was unable to do so, having sold a

portion of them, but he was willing to restore the remainder, and to pay a fair and reasonable price for the portion that he had sold. This offer was refused, and a verdict passed for the plaintiff.

Mr. *Bramwell* now moved for a rule to show cause, why there should not be a new trial, on the ground of misdirection of the learned judge. The action of trover assumes, that the plaintiff has some good ground of complaint. As against a wrong doer the plaintiff might have a good cause of action, but there was no conversion on the part of the defendant, except that which took place by the leave and licence of the plaintiff. The plaintiff as wharfinger had only a qualified property in the goods, and that had ceased when he voluntarily gave up possession of them to the defendant. In case the property had consisted of goods of a perishable nature, such as wine, and that had been consumed, the plaintiff could not have supported the action of trover.

Mr. Justice *Williams*. I think the action of trover can be supported. When the plaintiff discovered the mistake he had a right to see it rectified. I think there was a conversion when the defendant refused to deliver up that portion of the goods which remained unsold.

Mr. Justice *Coleridge*. I think there was a conversion, and that the plaintiff has a right to retain the verdict, on the plea of leave and licence. After the mistake was discovered by the plaintiff, part of the goods was disposed of by the defendant, which would amount to a conversion. I do not think that the special property which the plaintiff had in the goods, is limited in the manner contended for by Mr. *Bramwell*. The leave and licence of the plaintiff was shown to arise out of a mistake.

Mr. Justice *Wightman*. This case turns on the plea of leave and licence. I do not think that the qualified property in the goods ceased when there was a delivery by mistake. Then there was a leave and licence for a certain period, which was terminated by discovering the mistake, and part of the goods was disposed of afterwards.

Lord *Denman*, C. J., concurred.

Rule refused.

*Basset v. Pearce*. Q. B. Michaelmas Term, 1845.

#### ATTORNEY.—SHERIFF.—ACTION FOR FEES.

*A. an attorney, sent a writ of ca. sa. to the sheriff to be executed. The sheriff executed the writ.*

*Quære—Can the sheriff maintain an action against the attorney for his fees for the execution of the writ, or must the action be brought against the party in the original suit?*

*Assumpsit* for work and labour in the execution of a writ of *ca. sa.* Plea, *non assumpsit*.

The plaintiff was the sheriff of the county of Brecon. The defendant was an attorney, and

had as such issued a *ca. sa.* in the case of *Huxam v. Roberts*, in which he had acted as attorney for Huxam. He sent the writ in a letter to the plaintiff, desiring him in the usual manner to execute it. The letter began with the words—“*Huxam v. Roberts*. I send you a writ in this case.” The cause came on for trial before Mr. Justice *Coltman*, who, on proof of these facts expressed his opinion, that the credit must be taken to have been given, not to the attorney but to the principal in the original action: he therefore directed a nonsuit.

Mr. *V. Williams* now moved to set aside this nonsuit and have a new trial. The sheriff here could know nothing of the party, and perhaps would not have given him credit, but he knew the attorney in the way of business, and at once acted on his instructions. There was no case in point upon this particular matter, but in *Dew v. Parsons*, an action of this kind was brought by the sheriff, and the defendant, who was an attorney, was allowed to set off a sum of money which he insisted on as an excess paid above a legal fee. There was no question there raised as to the propriety of maintaining such an action as the present, and that case was, therefore, though only indirectly, an authority in favour of this action.

The court granted a rule to show cause.

*Mabey v. Mansfield*. Michaelmas Term, 1845.

#### Queen's Bench Practice Court.

[Reported by EDWARD LAWES, ESQ., Barrister-at-Law.]

#### CHANGING THE VENUE.

*The venue may, since the stat. 5 & 6 Will. 4, c. 76, be changed to Bristol between the Summer and Lent assizes, upon the usual affidavit that the cause of action arose there and not elsewhere; and the rule for so changing it is absolute in the first instance.*

*Carrow* moved for leave to change the venue from Middlesex to Bristol, upon the usual affidavit, that the cause of action arose in the city and county of Bristol and not elsewhere. The question was, he said, whether this could be done in Michaelmas Term, there being no Lent assizes at Bristol. Before the stat. 5 & 6 W. 4, c. 76, such an application would not have been granted between the Summer and Lent assizes, unless by consent or upon an affidavit of merits, by reason of Bristol being excepted from the operation of the act 39 G. 3, c. 52, s. 1, which enacted, that “in every action, whether the same be transitory or local, which shall be prosecuted or depending in any” “court of record at Westminster, and in every indictment removed,” &c., “and in every information,” &c., “and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of mandamus, if the venue in such action,” &c. “be laid in the county of any city or town corporate within” England, “or if such writ of

mandamus be directed, &c., that it shall and may be lawful for the court in which such action, indictment, information, or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff or of any defendant, to direct the issue or issues joined in such action," &c. "to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of venire and distringas accordingly, [if the said court shall think it fit and proper so to do." That exception,\* however, was repealed by sec. 109 of the 5 & 6 W. 4, c. 76, and since the passing of that act, if the venue be originally laid in or afterwards changed to Bristol, the court may at the instance of either plaintiff or defendant direct the cause to be tried in the next adjoining county. The plaintiff, therefore, will not, if the venue be changed to Bristol, be subjected to any unreasonable delay, for, if he please, he may still go to trial at the next Lent assizes for Gloucestershire, which by schedule C. of the 5 & 6 W. 4, is to be considered as the county next adjoining to Bristol.

*Patteson*, J., acceded to the argument, and granted a

Rule absolute accordingly.

*Cole v. Gain*. Michaelmas Term, Nov. 3, 1845.

#### Common Pleas.

##### PRACTICE.—JUDGMENT AS IN CASE OF A NONSUIT.

*It is no answer to a rule for judgment as in case of a nonsuit, that the action is brought for a sum recoverable in a court of requests.*

The plaintiff brought an action to recover a debt of 3*l*. 7*s*. Finding that he ought to have sued in a local court of requests, and that he would, by the operation of the local act and of the 5 & 6 Vict. c. 97, be liable to pay costs to the defendant, even if he succeeded in establishing his claim, he declined to proceed; whereupon the defendant obtained a rule *nisi* for judgment as in case of a nonsuit.

*Channell*, Serjeant, who showed cause, submitted that the proper course would be to enter a *stet processus*.

*Byles*, Serjeant, contra, objected to a *stet processus*, and insisted that he ought to have his rule made absolute.

*Per curiam*.—The plaintiff ought to have known his rights when he brought the action. He must give a peremptory undertaking.

Rule accordingly.

*Nicholson v. Jackson*, E. T. 1845.

##### PRACTICE.—JUDGMENT AS IN CASE OF A NONSUIT.—DISCONTINUANCE.

*The plaintiff cannot have a rule to discontinue pending a rule which stays the proceedings.*

*Dowling*, Serjeant, obtained a rule *nisi* to set aside a rule to discontinue, which the plaintiff

had obtained after a rule for judgment as in case of a nonsuit, whereby the proceedings were stayed. He cited *Low v. Peacock*, Barnes, 316, to show that a discontinuance is a "proceeding."

*Channell*, Serjeant, contra, submitted that a discontinuance was a withdrawal from the suit, and not a proceeding; and he sought to distinguish *Low v. Peacock* from the present case, on the ground that there the rule to discontinue was a rule *nisi*; whereas here it was a common side-bar rule, absolute in the first instance.

*Per curiam*.—It is difficult to say that a rule to discontinue is not a step in the cause. To perfect it, there must be a taxation of costs; and that clearly would be taking a step in the cause. I see no sufficient reason to dispute the authority of the case in Barnes.

Rule absolute.

*Murray v. Silver*, E. T. 1845.

#### Exchequer.

[Reported by A. P. HURLSTONE, Esq., Barrister-at-Law.]

##### ATTORNEY.—SIGNED BILL.—COSTS.—BILL OF EXCHANGE.

*Where a bill of exchange or other security is given to an attorney on account of costs, he may bring an action on such security, although he has not delivered a signed bill. It is no objection to such security that it includes future costs.*

**ASSUMPSIT** by drawer against acceptor of several bills of exchange.

Plea, that the bills were given for the amount of fees, charges, and disbursements due and to be due from the defendant to the plaintiff for work and labour as an attorney and solicitor; and that the plaintiff did not, one month before the commencement of the suit, deliver to the defendant a bill of such fees, charges, and disbursements, subscribed with the proper hand of the plaintiff.

To this plea the plaintiff demurred.

*V. Williams*, who appeared to support the demurrer, was stopped by the court, who called on

*Lush* to support the plea. — The plea is framed on the 37th section of the 6 & 7 Vict. c. 73, which enacts, that no attorney or solicitor shall maintain any action for the recovery of his fees, charges, or disbursements, until after the expiration of one month from the time that he shall have delivered a bill. [*Parke*, B. That does not prevent him from suing on any security which his client may give. Unless the client could recover back the money if he paid the bill, this plea is no defence to the action.] The statute may be pleaded at any time before actual payment. A bill of exchange is no payment of a debt; after it is dishonoured the party may sue on the original consideration. The fact of the defendant being unable to recover back the money if paid, does not affect the present question, for between the immediate parties the consideration of a bill or note may always be disputed. An insolvent debtor who gives a

\* The exception is contained in s. 10.

bill for a debt inserted in his schedule, cannot recover back the money if he pays the bill, but if he is sued upon the bill he may plead, that the consideration was a debt inserted in his schedule. Here the plaintiff is in fact suing for his fees, charges, and disbursements. [*Pollock*, C. B. He is only suing on a security which must be considered as given on account; instead of pleading, he should have taken out a summons to tax the bill, and stay proceedings on payment into court of the sum found due on taxation.] Another objection is, that the bills were given not only for costs then due but for future costs. The court invariably set aside judgments entered up on warrants of attorney given for future costs. [*Parke*, B. But that does not vitiate the contract. There is no question that the plea is bad.]

Judgment for plaintiff.

*Jeffreys v. Evans*. Exchequer. T. T., June 4, 1845.

# CHANCERY CAUSE LISTS.

*Michaelmas Term, 1845.*

Lord Chancellor.

## APPEALS.

Day to be fixed	Strickland	Strickland	
	Ditto	Boynton	do.
	Ditto	Strickland	
	Miller	Craig	do.
	Davenport	Bishop	do.
	Forbes	Peacock	do.
	Tylee	Hinton	appeal
	Mila	Walton	do.
	Vmdelaur	Blagrove	do.
	Crosley	Derby Gas Co.	do.
	Parker	Balt	do.
	Ladbrooke	Smith	do.
S. O.	Hitch	Leworthy	do.
	Coore	Lowndes	do.
	Minor	Minor	3 appeals
	Drake	Drake	appeal
	Dalton	Hayter	do.
	Baggatt	Meux	do.
	Payne	Banner	do.
	Dobson	Lvall	do.
	Mocrat	Richardson	do.
	Millbank	Collier	do. want of parties
	Deeks	Stanhope	3 appeals
	Wiltshire	Rabbit	appeal
	Archer	Hudson	do.
	Turner	Newport	do.
Attorney-Gen.	{ Masters & Wardens &c. of the City of Bristol. }		appeal
	Trulock	Robey	appeal
	Younghusband	Gisborne	do.
	Courtney	Williams	do.
	Whitworth	Gaugain	do.
	Bush	Shipman	do.
	Black	Chaytor	do.
{ Mitford	Reynolds exons. by order		
{ Johnson	Ditto fur. dirs. by order		
	Thwaites	Foreman	do.
	Watts	Lord Eglinton	do.
	Carson	Belworthy	do.
	Watson	Parker	do.
	Dietrichson	Cabburn	do.
	Bellamy	Sabine	do.

Attorney-Gen.	Malkin	cause by order
Johnson	Child	appeal
Kidd	North	do.
Dord	Wightwick	do.
Molesworth	Howard	do.
Carmichael	Carmichael	do.
Hawkes	Howell	do.
Heming	Swinnerton	do.
Trail	Bull	do.
Voude	Jones	do.

## Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

*Nov. 24th*, *Huxtable v. The State of Illinois*, dem.  
*Wood v. Parr*, dem.  
*Hollingsworth v. Grasett*, dem.  
*Langton v. Manby*, objection as to parties.  
*Hurst v. Kemp*, dem.  
*Damer v. Blount*, dem.  
*Stutely v. Chadwick*, dem.  
*Mayor &c. of Rochester v. Lee*, dem.  
*Bryan v. Twigg, Blackwell Carr, exons. fur. dirs.*  
suppl. bill and petn.; *Blackwell v. Bryan*, cause by order.  
*Lewis v. Hinton*.  
*After Term*. *Grand Junction Canal Co. v. Dimes*, at request of deft.  
*Wilson v. Williams*.  
*Nicholson v. Wilson, Pinder v. Wilson*, fur. dirs.  
*ht. hd.*  
*To fix a day*. *Davis v. Chanter*  
*Jenkins v. Briant*, fur. dirs. and costs.  
*Atkinson v. Jones, Athinson v. Manley*.  
*Nixon v. Taff Vale Railway Co., Nixon v. Acraman*.  
*Friswell v. King*, fur. dirs. and costs and petn.  
*Smith v. Warde*, fur. dirs. and costs.  
*Gaches v. Warner, Gaches v. Pilkington*.  
*Lake v. Tucker*  
*Mayor, &c. of Louth v. Warden, &c., of Louth Free School*.  
*Goodall v. Maxwell, Goodall v. Crane*.  
*Blackburn v. Staniland*.  
*Champion v. Champion*.  
*Hill v. Hanson, exons.*  
*Sanders v. Sanders, cause, Same v. Same*, fur. dirs. and costs.  
*Godkin v. Macdonald*.  
*Jones v. Francis*.  
*Langton v. Cozens, Langton v. Leaver*.  
*Gregson v. Hindley*.  
*Roberts v. Thomas, otherwise James*.  
*Cheeseman v. Vincent*.  
*Mayo v. Roake*.  
*Ware v. Rowland*.  
*Richards v. Perkins, Richards v. Stokes, Richards v. Myles*, fur. dirs. and costs.  
*Attorney-Gen. v. Earl of Devon*.  
*Beale v. Boot*, fur. dirs. and costs.  
*Hearn v. Way*.  
*Willis v. Jones*.  
*Hazlewood v. Partridge*, fur. dirs. and petn.  
*Jones v. Jones, 4 causes*.  
*Harris v. Davidson*.  
*Davis v. Best*.  
*Parker v. Goude*.  
*Beckwith v. Hawkins, Copeland v. Hawkins*, fur. dirs. and costs.  
*Burton v. Taylor*.  
*Johnson v. Forrester*, fur. dirs. & costs.  
*Short. Duff v. Denton*, fur. dirs. and costs.

Ross v. Blink.  
 Jones v. Dyer, fur. dirs. and costs.  
 Henderson v. Eason, exons.  
 Searle v. Law, fur. dirs. and costs.  
 Ferrabee v. Lewis, fur. dirs. and costs.  
 May v. Stephens.  
*Short.* Dawe v. Read, fur. dirs. and costs.  
 Harcourt v. M'Cabe.  
 Booth v. Cheswick, exons.  
 Furness v. Maahiter.  
*Short.* Foster v. Selby.  
 Allibone v. Jones.  
 Smith v. Sherwood.  
*Short.* Attorney-Gen. v. Barraclough.

### Vice-Chancellor Knight Bruce.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Robinson v. Lizardi, dem.  
 Tarbuck v. Martin, fur. dirs. pt. hd.  
 Dodsworth v. Kinniard, at request of deft., Same v. Same.  
*After Term.* Hobson v. Everett, Hobson v. Ferraby.  
 Burnie v. Getting.  
 Smyth v. Graham.  
 Hatfield v. Wells.  
 Parry v. Maddocks, exons.  
 Morgan v. Maynard, Morgan v. Kaye.  
 Galton v. Emiss, Galton v. Smith, fur. dirs. and costs.  
 Parlane v. Goose.  
 Livesay v. Willcock.  
 Adams v. Barry.  
 Murray v. Murray, fur. dirs. and costs.  
 Gregson v. Heathcote, fur. dirs. and costs.  
 Davies v. Davies.  
 Clouch v. French, exons, fur. dirs. and costs.  
 Woodward v. Miller.  
 Grey v. Reynolds.

### Vice-Chancellor Stigram.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

*When suppl. bill set down.* Adie v. Walford, Walford v. Adie.  
*To apply to L. C.* Atkinson v. Boyes.  
 Wood v. Freeman.  
 Way v. Bassett, Way v. Follett, part hd.  
 3rd Nov. Sharp v. Taylor, exons. 2 sets, Same v. Same, fur. dirs. and costs.  
 3rd Nov. Hill v. Davies.  
 4th Nov. Dykes v. Farr.  
 Wavell v. Sunderland, fur. dirs. and petn. pt. hd.  
 Monypenny v. Dering.  
 Buckell v. Blenkhorn.  
*Short.* Sayer v. Sayer.  
 Winter v. Derrick.  
 Holt v. Dewell, fur. dirs. and costs.  
 Norman v. Fraser, Norman v. Few, Norman v. Tompkins, fur. dirs. and costs.  
 Hicks v. Winterbottom.  
 Winckworth v. May.  
 Falkner v. Lord Wyndford, fur. dirs. and costs.  
*Short.* Pooley v. Majoribanks.  
 Harris v. Slade, fur. dirs. and costs.  
 Hicks v. Flower, fur. dirs. and costs.  
 Harris v. Lewis.  
 Meynick v. Laws.  
 Horlock v. Patch, exons.

## COMMON LAW CAUSE LISTS.

[Concluded from p. 20, ante.]

### Queen's Bench.

Easter Term, 1845.

*Middlesex.*—J. G. Chuck v. Bennett; Same v. Same; May and wife v. Burdett; Crocker v. Musgrove and another; Normansel v. Creft; Johnson and another, assignees, &c. v. Wolsey; The Queen v. Hon. E. Pelham.

*London.*—Ford v. Dernford, executor, De Medina v. Grove; Rooker and others v. Percy; Bowles v. Millbourn; Alfred v. Farlow; Mears v. Green; The Queen v. Douglas.

*Herts.*—Griffiths v. Lewis.

*Surrey.*—Solomon v. Lawson; Dobson, Knt., and another v. Blackmore, the elder; Barnett v. Graham; Girdlestone v. M'Gouran, in replevin.

*Bucks.*—Rowles v. Senior and others; Bryant v. Jennings.

*Cambridge.*—Layton v. Hurry.

*Chester.*—Doe d. her Majesty v. Archbishop of York and others; Stewart v. Wilkinson.

*Wilts.*—Lee v. Merrett.

*Devon.*—Doe d. E. of Egremont v. Courtney; Doe d. Dayman v. Moors; Wood v. Hewett; Barratt v. Oliver; Doe d. several dems. of Molesworth, Bt. and others v. Sleeman and another; Tanner, executrix, &c. v. Moore.

*Somerset.*—Lambert v. Lyddon.

*Lancaster.*—The Queen v. Guardians of Rochdale Union.

*Northumberland.*—Bolam v. Shaw; Davidson v. Reed.

*Durham.*—Ray v. Thompson; The Queen v. Great North of England Railway Co.; Hansill v. Hutton, Esq.

*York.*—Doe d. Lord Downe v. Thompson; Lord Viscount Downe v. Thomson; Phillips v. Broadley; Petch and wife v. Lyon; Brown v. Ayre; Wilson v. Nightingale and others; James v. Brook.

*Liverpool.*—Cannall, clk. v. Gandy.

*Lincoln.*—Saffery v. Wray.

*Notts.*—Parker v. Dennett.

*Leicester.*—Hassell v. Heming; Doe d. Bowley and others v. Barnes.

*Warwick.*—Blakesley v. Smallwood and another.

*Oxford.*—Tollett v. Hon. J. H. D. Astley.

*Stafford.*—Inskip v. Harper and others.

*Salop.*—Stokes v. Boycott, Esq., in replevin.

*Monmouth.*—Prickett v. Gratex; Williams v. Stiven.

*Gloucester.*—Clutterbuck v. Halls.

*Glamorgan.*—Doe d. Simpson v. John.

*Tried during Easter Term, 1845.*

*Middlesex.*—Hopkins v. Richardson.

*Trinity Term, 1845.*

*Middlesex.*—Rich v. Dix; Curling v. Shepherd.

*London.*—Sheringham v. Collins; Day, by her next friend v. Edwards; Sedgwick v. Hammon.

*Tried during Trinity Term, 1845.*

*Middlesex.*—Paull v. Simpson; Mitchell v. King.

#### SPECIAL CASES AND DEMURRERS.

Michaelmas Term, 1845.

Elwell v. Birmingham Canal Company, special case.

Mayor, &c. of Litchfield v. Simpson, dem.

Wrightup v. Greenacre, dem.

Clarke and others v. Tinker, special case.

Pilkinborn v. Wright, dem.

Nicholas v. Wright, dem.  
Ward and others v. London and Blackwall Rail-  
way Company, dem.

Goeling v. Veley and another, dem.  
Roe d. Jackson and others v. Hartsborn and  
others, special case.

Page v. Hatchett, dem.  
Brutton v. Shervill, dem.  
Young and another v. Tagg, dem.  
Lomas v. Ashworth, special case.  
Chawner v. Cummings, special case.  
Hutt v. Morrell and another, dem.  
Short v. Stone, dem.  
Rumball and another v. Mount, special case.  
Wakefeld and another v. Brown, dem.  
Boisson v. Staunton and another, dem.  
Oliveron and another v. Brightman and others,  
special case.

Bold and another v. Rotherham, special case.  
Barley v. Walford, dem.  
Allport v. Nutt, dem.  
Crow v. Falk and another, dem.  
Lovelock v. Franklyn and another, executors, &c.  
dem.

Harrison v. Vardy and another, in replevin, dem.  
Same v. Fenwick, in replevin, dem.  
Hawkins and another v. Benton, dem.  
Parnell v. Jones, dem.  
Baillie v. Moore, Esq. dem.  
Symonds v. Harding, clk. dem.  
Braithwaite v. Gardiner, Bt. dem.  
Harrold v. Whitaker, dem.  
Doe d. Earl of Egremont v. Stephens, special  
case; Same v. Same, ditto; Same v. Same, ditto.  
Scott v. Hartley, dem.  
Dale v. Pollard and others, special case.  
Pollitt v. Forrest and others, error.  
Stephenson, executor, &c. v. Newman, Secy., &c.  
dem.

Barber and others, v. Butcher, dem.  
Swallow v. Ridgway, dem.  
Churley v. Boycott the younger, dem.  
Scadding v. Lorant, special case.  
Vine and another v. Bird, dem.  
Rigby v. Weymouth, dem.  
Edmonds v. Evans, dem.  
Carter v. Nichols, dem.  
Vine and another v. Bird, dem.  
Dobbie v. Patchett, dem.  
Higgins v. Thomas, dem.  
Garrett v. Dryden, Bt., dem.  
Taylor v. Brook, dem.  
Giles v. Giles, dem.

### Common Pleas.

*Remanet Paper of Michaelmas Term, 9 Vict., 1845.*

#### Enlarged Rules.

To 1st day.—Ilderton v. Sill.  
To 2nd day.—Tolson v. Bishop of Carlisle and  
others.

#### New Trials of Easter Term last.

London.—Robertson v. Jackson and others.

#### New Trials of Trinity Term last.

London.—Campbell v. Webster; Snelling v.  
Gourles.

#### CUR. AD VULT.

Pim v. Grazebrook and another.  
Coxhead v. Richards.  
Blackham v. Pugh.  
Patterson and others v. Holland and others.

*Demurrer Paper of Michaelmas Term, 9 Vict., 1845.*

Monday . . .	Nov. 3	} Motions in arrest of judg- ment.
Tuesday . . .	4	
Wednesday . . .	5	
Thursday . . .	6	

Wednesday, . . . 12 Special arguments.

Bell and others, assignees, v. Coleman.  
Smith v. Nesbitt.  
Hinton v. Acraman  
Doe Woodnall and others v. Woodnall and an-  
other.

Gillon v. Deare.  
Tempest and another v. Kilner.  
Firaz v. Nicholls.  
Wood v. Kerry.  
Chapman v. Sutton.  
Wilkins v. Hopkins.  
Friday, Nov. 14. Special arguments.  
Wade v. Simeon.  
Atkins v. Humphery, sued with another.  
Johnson and another, assignees v. Wellealey.  
Wednesday, Nov. 19. Special arguments.  
Friday, 21. ditto.

### Exchequer of Pleas.

#### PEREMPTORY PAPER.

*For Michaelmas Term, 9 Vict., 1845.*

To be called on the first day of the Term, after the  
motions, and to be proceeded with the next day, if  
necessary before the motions.

June 3, 1845.—Cock v. Gent and others.

#### SPECIAL PAPER.

*For Michaelmas Term, 9 Vict., 1845.*

Romanets for Trinity Term, 1845.

#### For Judgment.

Duncan v. Benson, dem.  
(Heard 2nd June, 1845.)

Slater and wife v. Dangerfield. Special case, by  
order of Mr. Baron Rolfe.  
(Heard 20th June 1845.)

#### For Argument.

Davis v. Nutt, dem.  
(To stand over until similar case disposed of in  
Common Pleas.)

Offer v. Windsor, dem.  
Doe d. Sams v. Garlick, special case, by order of  
Mr. Baron Rolfe, part heard 27th Jan. 1845.  
Bevins v. Hulme, dem.  
Smyth v. Holmes, dem.  
Clarke and another, executors, &c. v. Richardson,  
administrator, &c., dem.  
Ingram, executrix, &c. v. Harris, dem.  
Ewart, a pauper, v. Jones, dem.  
Brittain v. Lloyd, special case, by order of Nisi  
Prius.

The Earl of Rosse v. Wainman, special case, by  
order of Mr. Baron Parke.  
Sutcliffe, assignee, &c. v. Brooke, dem.

#### NEW TRIAL PAPER.

*For Michaelmas Term, 9 Vict., 1845.*

#### For Argument.

Moved Hilary Term, 1845.

London, Lord Chief Baron.—Newall v. Webster  
and others.

(Moved Easter Term, 1845.)

York, Mr. Justice Coltman.—Hale v. Oldroyd.



*Liverpool, Mr. Justice Wightman.*—Dickenson v. Marrow.

*Middlesex, Lord Chief Baron.*—Belcher and others, assignees, &c. v. Magnay and others; Same v. Same.

Moved Trinity Term, 1845.

*Middlesex, Lord Chief Baron.*—Bartlet v. Benson; Williams, who sued, &c. v. Newton.

# **BANKRUPTCY DIVIDENDS DECLARED.**

*From Sept. 30th, to 25th Oct. 1845, both inclusive.*

Askham, S., Bradford, Commission Agent. Div. 11d.  
 Atkinson, G., Monkwearmouthshore, Hardwareman. Final div. 3th of a penny.  
 Bainbridge, J., Richmond, York, Ironfounder. Final div. 1s. 10½d.  
 Barron, G., Davies Street, Berkeley Square, Builder. Div. 3½d.  
 Bazley, J. H., Manchester, Cotton Manufacturer. Div. 2s. 6½d.  
 Berwick, J., Windhill, Calverley, York, Worsted Stuff Manufacturer. Div. 2s. 1d.  
 Bowen, W., Merthyr Tydvil, Grocer. Div. 1s. 3d.  
 Brez, J. J., Chester, Tailor. Div. 10s.  
 Britton, W., Borrowby, York, Linen Cloth Manufacturer. Div. 1½d.  
 Clarke, W., Sheffield, Builder. Div. 3d.  
 Clegg, E., Waithland, Rochdale, Flannel Manufacturer. Div. 4½d.  
 Coates, W., sen., and W. Coates, jun., Newcastle-upon-Tyne, Wine Merchants. Final Div. 4s. 9d. ½ of a penny.  
 Cockburn, J., New Broad Street, Merchant. Div. 1s.  
 Cooke, H., Liverpool, Painter. Div. 2s. 2d.  
 Couchman, J. T., High Street, Kensington, Builder. Div. 9d.  
 Crossfield, A., 91, Whitechapel Road, Scrivener. Div. 1s. 4d.  
 Deakin, J. Final div. 10½d.  
 Dobson, L., Leeds, Cloth Manufacturer. Final div. 1½d.  
 Farren, J., Nine Elms, Surrey, Corn Dealer. Div. 9d.  
 Fisher, G., Bradford, Dealer. Div. 8s.  
 Fossick, S., late of Mumford Court, Milk Street, Cheapside, Umbrella Manufacturer. Div. 1½d.  
 Foster, W., Liverpool, Tailor. Div. 6d.  
 Foster, G., Carlisle, Innkeeper. Final div. 1½d.  
 Gibbs, J., 42, Jernyn Street, Scrivener. Div. 6d.  
 Gilchrist, G., and J. M. Gilchrist, Liverpool, Merchants. Div. 9d.  
 Harrison, W., Woodhouse Carr, Leeds, Pattern Dyer. Div. 3s. 6d.  
 Hasleden, J., Bolton-le-Moors, Cotton Spinner. Div. 2s. 6d.  
 Hick, J. A., Leeds, Carver. Final div. 4s. 3d.  
 Hingley, N. Final div. 1½d.  
 Holroyd, J., Wheatley, York, Cotton Warp Maker. Div. 1s. 5d.  
 Humphrey, T., sen., and T. Humphrey, jun., Kingston-upon-Hull, Shipwrights. Div. on separate estate of T. Humphrey, sen., 8s., on separate estate of T. Humphrey, jun., div. 16s.

Hunt, C. J., 21, Cork Street, Burlington Gardens, and 64, St. James Street, Billiard Table Maker. Div. 9s.

Hunter, B. H., Liverpool, Merchant. Div. 1s.

Jeeves, T., Hitchin, Hertford, Bricklayer. Div. 2s. 4d.

Jones, W., Acton, Grocer-Farmer. Div. 7d.

Kipling, R., and W. Atkinson, Wood Street, Cheapside, Warehousemen. Div. 1s., on separate estate of R. Kipling. Final div. 15s.

Lambert, J., Durham, Grocer. Final div. 2d.

Libbis, S., Stratton, St. Mary, Norfolk, Innkeeper. Div. 2s. 1d.

Manwaring, W., Birmingham, Surgeon. Final div. 7½d.

Mears, J., Leeds, Grocer. Div. 3s. 4d.

Miller, J., and G. Cradock, Stockton-on-Tees, Patent Sail Cloth and Rope Manufacturer. Div. on separate estate of G. Cradock, 10½d. Firm div. 1s. 5d.

Milne, J., High Crompton, Lancaster, Dealer. Div. 5s. 10½d.

Monckman, T. M., Bradford, Tobaccoist. Final div. 9d.

Newton, J., J. W. Newton, and F. Newton, Rotherham, Spirit Merchants. Div. 6s. 8d. On separate estate of J. Newton, div. 20s. On separate of J. W. Newton, div. 7s. On separate estate of J. Newton, div. 1s. 6d.

Nichol, H., Greetland, Halifax, Worsted Spinner. Final div. 1s. 6d.

Pearson, J. E., Sheffield, Wine Merchant. Final div. 1s.

Pearson, L., Newcastle-upon-Tyne, Leather Catter. Div. 1s. 6d.

Phillips, J., and T. Pearson, Finsbury House, South Place, Finsbury, Silk Dressers. Div. 12s.

Revely, T., junr., Newcastle-upon-Tyne, Plumber. Div. 2s.

Rostron, L., and J. Edenfield, Manufacturers. Final div. 1½d.

Saffran, H. J. E., Huddersfield, Cloth Merchant. Div. 1s. 8d.

Scott, W., Birmingham, Gun Maker. Final div. 4½d.

Thackrey, J., Leeds, Draper. Div. 8s.  
 Thompson, W., Rawdon, York, Cloth Manufacturer. Final div. 6s. 1d.

Wood, J., now or late of Leeside, Saddleworth, York, Merchant. Div. 2s. 6d.

## **THE EDITOR'S LETTER-BOX.**

BUT few decisions on points of practice have yet occurred in the present term. Some of them will be found in the present number, and we shall procure as early a report as possible of that class of cases. This department of our work we hope to make generally useful as a record of decisions on matters of practice in all the courts of law and equity.

The subject of the proposed removal of the courts has attracted the attention of the public papers, particularly the *Times*, the *Chronicle*, and the *Globe*, and they are all in favour of the measure. We are glad to find that our plan of the site and the surrounding inns of court contained in our last number, has been favourably regarded by our readers.

# The Legal Observer.

SATURDAY, NOVEMBER 15, 1845.

—“Quod magis ad nos  
Pertinet, et necire malum est, agnoscimus.”

HORAT.

## COMMONS INCLOSURE ACT.

8 & 9 VICT. c. 118.

THE new statutes relating to the Law of Real Property and the Administration of Justice, most of which passed at the close of the last session, were printed as speedily as possible in our last volume, and followed by explanatory notes. There are a few other acts, important in themselves, but not coming under either of the classes we have mentioned, and these we shall dispose of before Christmas. Amongst them is the Act “to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete executions, and for the non-execution of the powers of general and local Inclosure acts; and to provide for the revival of such powers in certain cases.” This act, after much opposition and debate, passed both houses, and received the royal assent on the 8th August last.

The preamble states the various objects of the act, which are mainly indicated in the title, but may be conveniently subdivided, as follow:—

1. To facilitate the inclosure and improvement of commons and other lands now subject to rights of property, which obstruct cultivation and the productive employment of labour.

2. To facilitate such exchanges of lands and such division of lands intermixed or divided into convenient parcels, as may be beneficial to the respective owners.

3. To provide remedies for the defective or incomplete execution and for the non-execution of powers created by general

and local acts of inclosure, and to authorise the revival of such powers in certain cases.

The act, consisting of 169 sections, occupying 76 pages of the folio edition, is too long for entire insertion in these pages; but many parts of it should be known to our readers, and we shall therefore lay before them some of the clauses, and such an abstract of the others as, we trust, will be deemed sufficient.

1. Two commissioners are to be appointed by one of the Secretaries of State, and such commissioners, with the Chief Commissioner of Woods and Forests, are to carry the act into effect.

2. The First Commissioner of Woods and Forests to be chairman of commissioners. Style of commissioners to be “The Inclosure Commissioners for England and Wales.” To have a common seal.

3. Commissioners to make annual reports; and also special reports.

4. Power to appoint and remove assistant commissioners, secretary, clerks, &c.

5. Appointments under this act limited to five years.

6. Salaries and allowances: 1,500*l.* to one commissioner; 3 guineas per day to assistant commissioners, and travelling expenses.

7. Allowances and salaries to be paid out of the Consolidated Fund.

8. Commissioners and assistant commissioners to make a declaration.

9. Documents of the Tithe Commissioners may be used. Power to summon witnesses.

10. Commissioners may delegate powers to assistant commissioners.

The following are the descriptions of land subject to be inclosed under this act:—

11. All lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times,

seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof; all gated and stinted pastures in which the property of the soil or of some part thereof is in the owners of the cattle gates or other gates or stints, or any of them; and also all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle gates or other gates or stints, or any of them; all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes or bounds or otherwise distinguishable; all land in which the property or right of or to the vesture or herbage, or any part thereof, during the whole or any part of the year, or the property or right of or to the wood or underwood growing and to grow thereon, is separated from the property of the soil; and all lot meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation or otherwise, shall be land subject to be inclosed under this act.

The following lands are *excluded* from the powers of the act :—

12. That no waste land of any manor on which the tenants of such manor have rights of common, nor any land whatsoever subject to rights of common which may be exercised at all times of every year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which shall not be limited by number or stints, shall be inclosed under this act without the previous authority of parliament in each particular case, as hereinafter provided; provided also, that neither this act, nor anything which may be done under or by virtue thereof, shall authorise to be made any embankment, erection, or encroachment without the consent of the commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, and where the consent of any grantee of the office of Admiral or Vice Admiral might have been required by law if this act had not been passed, the consent also of such grantee, in or upon the shore of any harbour, or the bank of any navigable river so far as the tide flows up the same, or shall give to or confer upon any person any right, title, estate, or interest to or in any such embankment, erection, or encroachment already made, other than what he may legally have at the time of the passing of this act, or confer upon any person whatsoever any right, title, estate, or interest whatsoever in any lands or soil whereon the tide of the sea flows and re-flows.

13. That no part of the New Forest in the county of Southampton, or of the Forest of

Dean in the county of Gloucester, shall be land subject to be enclosed under this act.

14. That no lands situate within fifteen miles of the city of London, or within two miles of any city or town of ten thousand inhabitants, or within two miles and a half of any city or town of twenty thousand inhabitants, or within three miles of any city or town of thirty thousand inhabitants, or within three miles and a half of any city or town of seventy thousand inhabitants, or within four miles of any city or town of one hundred thousand inhabitants, shall be subject to be inclosed under the provisions of this act without the previous authority of parliament in each particular case, as hereinafter provided; and in all such cases the number of inhabitants shall be ascertained by the then last parliamentary census thereof, and that the distance shall be measured in a direct line from the town hall, if there shall be any town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there shall be more churches than one, then from the principal market place of any such city or town.

15. That no town green or village green shall be subject to be inclosed under this act; provided that in every case in which an inclosure of lands in the parish in which such town green or village green may be situate shall be made under the authority of this act it shall be lawful for the commissioners, if they shall think fit, to direct that such town green or village green, provided such green be of equal or greater extent, be allotted to the churchwardens and overseers of the poor of such parish, in trust to allow the same to be used for the purposes of exercise and recreation, and the same shall be allotted and awarded accordingly, in like manner, and with the like provisions for making or maintaining the fences thereof, and preserving the surface thereof, and draining and levelling the same where occasion shall require, as hereinafter directed concerning the allotments to be made for the purposes of exercise and recreation; and such green may be so allotted in addition to other land which may be allotted for the purposes of exercise and recreation, or, if the commissioners shall think it sufficient, may be allotted in substitution for other land which might have been required to be allotted for such purposes; and in every case in which such town green or village green shall adjoin land subject to be enclosed under this act, and shall not be separated from such land by fences or known bounds, the commissioners shall, in the provisional order concerning such inclosure, set out a boundary line between such green and the adjoining land, and shall in their annual general report mention and describe such boundary.

The following are declared to be the persons interested in lands for the purpose of applications under the act :—

16. The persons interested in lands subject to be inclosed under this act, or otherwise

subject or to become subject to the provisions of this act, shall be deemed to be the persons hereinafter mentioned, and no others; (that is to say,) the persons who shall be in the actual possession or enjoyment of any such land or any part thereof, or any common or common right thereon, or any manor of which such land or any part thereof shall be waste, or who shall be in the actual receipt of the rents and profits of such land or part thereof, common, or common right, or manor respectively, (except any tenant for life or lives or for years holding under a lease or agreement for a lease on which a rent of not less than two thirds of the clear yearly value of the premises comprised therein shall have been reserved, and except any tenant for years whatsoever holding under a lease or agreement for a lease for a term which shall not have exceeded fourteen years from the commencement thereof, and except any tenant from year to year at will or sufferance,) and that without regard to the real amount of interest of such persons; and in every case in which any such land, common, or common right, or manor, shall have been leased or agreed to be leased to any person or persons for life or lives or for years by any lease or agreement for a lease on which a rent of not less than two thirds of the clear yearly value of the premises comprised therein shall have been reserved, and in every case in which any such land, common, or common right, or manor, shall be in the possession of a tenant from year to year at will or sufferance, or shall have been leased or agreed to be leased for a term which shall not have exceeded fourteen years from the commencement thereof, the person who shall for the time being be entitled to the said land, common, or common right, or manor, in reversion immediately expectant on the term created or agreed to be created by such lease or agreement for a lease respectively, or subject to the tenancy from year to year at will or sufferance, shall be deemed for the purposes of this act to be the person interested as aforesaid in respect of such land, common, or common right, or manor; and in every case in which any such land, common, or common right, or manor, as aforesaid, shall have been leased or agreed to be leased to any person for life or lives or for years by any lease or agreement for a lease in which a rent less than two thirds of the clear yearly value of the premises comprised therein shall have been reserved, and of which the term shall have exceeded fourteen years from the commencement thereof, the person who shall for the time being be in the actual receipt of the rent reserved upon such lease or agreement for a lease shall, jointly with the person who shall be liable to the payment of such rent of such land, common, or common right, or manor, be deemed for the purposes of this act to be the person interested in respect of such land, common, or common right, or manor respectively; and in every case in which any person shall be in possession or enjoyment or receipt of the rents or profits of any such land, common, or common

right, or manor, under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person who but for such writ or order would have been in possession, enjoyment, or receipt of the rents and profits, shall, jointly with the person in possession, enjoyment, or receipt by virtue of such writ or order, be deemed for the purposes of this act to be the person interested in respect of such land, common, or common right, or manor respectively.

17. That whenever her Majesty shall be interested in land as aforesaid, the First Commissioner of her Majesty's Woods, Forests, Land Revenues, Works, and Buildings for the time being, or in case her Majesty shall be so interested in right of the duchy of Lancaster, the Chancellor of the duchy of Lancaster, shall for the purposes of this act, and to the extent of such respective interest, be substituted for the person interested as aforesaid.

18. That whenever the Duke of Cornwall shall be interested in land as aforesaid, the Lord Warden of the Stannaries shall for the purposes of this act, and to the extent of such interest, be substituted instead of the person interested as aforesaid.

19. That whenever an interest in land according to the provisions of this act shall be vested in several persons as co-trustees or in joint tenancy, such persons shall for the purposes of this act be considered as jointly interested, and entitled to one vote only in respect of their joint interest; but any one or more of such persons may, unless the other or others of them shall dissent therefrom, act or vote under this act; and the majority in number of any such persons may, notwithstanding any dissent of the minority, act or vote under this act in the same manner as if all such persons had concurred; and whenever several persons as tenants in coparcenary or in common shall be so interested, each coparcener or tenant in common shall for the purposes of this act, and to the extent of the value of his respective undivided share, be deemed separately interested and entitled to vote as if he were tenant in severalty.

20. That whenever any person interested in land as aforesaid shall be an infant, lunatic, idiot, feme covert, or under any other legal disability, or beyond the seas, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof, such person as may be nominated for that purpose by the commissioners, and whom they are hereby empowered to nominate under their hands and seal, shall for the purposes of this act be substituted in the place of such person so interested.

21. Attorneys may be appointed by persons interested. Form of power of attorney.

The following is the mode prescribed for estimating proportional interests:—

22. That the proportional value of the respective interests of the several persons in

interested in any land subject to be inclosed under this act, or otherwise subject or to become subject to the provisions of this act, shall, so far as relates to the power to sign any application, or to give any notice or consent, or to vote at any meeting under this act, be estimated as hereinafter mentioned; (that is to say,) where their interests shall be in respect of land or other rateable property, then according to the proportional sums at which such land or rateable property shall be rated to the relief of the poor; and when their interests shall be in respect of rights of common enjoyed or claimed in respect of any land, and not defined by numbers or stints, then according to the proportional sum at which the land in respect of which they enjoy or claim such rights of common shall be rated to the relief of the poor; and in case such interests shall be in respect of rights in a gated or stinted pasture, or of other rights defined by numbers or stints, then according to the proportional amount of their respective numbers or stints; but in case such interests shall be in respect of rights of common in gross, not rated to the relief of the poor, and not defined by numbers or stints, or in case, from any other cause, it shall appear to the commissioners, or to the assistant commissioner presiding at any meeting held for the purposes of this act, impracticable to estimate such proportional value in manner aforesaid, it shall be lawful for the commissioners or such assistant commissioner to direct in what manner such proportional value shall be estimated, regard being had to the circumstances of each particular case: Provided always, that in every case in which such assistant commissioner shall have directed in what manner such proportional value shall be estimated under the power hereinbefore contained he shall specially report to the commissioners the circumstances under which it shall have become necessary to exercise such power, and the directions he shall have given in the exercise thereof.

23. That the proportional value of the interest of the lord of a manor interested as lord in any land subject to be inclosed under this act, or, in case there shall be several lords of a manor or lords of several manors so interested in any land subject to be inclosed under this act, the proportional value of the respective interests of such lords, shall for the purposes aforesaid be estimated in such manner as the commissioners may direct.

24. Commissioners to frame forms of applications, &c.

25. Upon application to the commissioners, an assistant commissioner to inquire into the expediency of proposed inclosure.

26. Assistant commissioner to report on application.

27. Commissioners to embody the conditions of proposed inclosure in a provisional order, and to take consents of parties interested.

28. Separate applications for separate tracts.

29. Consent of the lord of the manor.

30. Allotments for exercise and recreation may be required as conditions of inclosure.

31. Allotments for labouring poor.

32. Acts for the inclosure of lands in pursuance of the reports of the commissioners to be deemed public general acts.

33. Meeting for appointing valuer.

34. Instructions to valuer.

35. Valuer may be assisted by an assistant commissioner.

36. Alterations in the instructions to valuer by commissioners not to be acted upon unless sanctioned by a majority of the persons interested.

37. A surveyor may be appointed where the parties interested think fit.

38. Form of declaration by valuer.

39. Power to set out boundaries of parishes. Appeal on questions of boundary to be tried by a jury before the commissioners, or assistant commissioners, or on appeal to the Court of Queen's Bench.

40. Non-attendance of jurymen.

41. Juries subject to same regulations as if returned for any court at Westminster.

42. Costs of appeal.

43. Security for costs to be taken by the commissioners.

44. Persons dissatisfied with determination of commissioners may appeal to Court of Queen's Bench.

45. Power to straighten boundaries.

46. Valuer to hold meetings.

47. Claims to be delivered in writing.

48. Statement of claims to be deposited for examination. Claims to be heard and determined by valuer, subject to appeal to commissioners.

In our next number we shall state the substance of the other sections of the act.

## NOTES ON EQUITY.

### EQUITABLE MORTGAGE.—WARD OF COURT.

THE origin of equitable mortgages is not very ancient. They were first sanctioned by Lord Chancellor Thurlow, in *Russell v. Russell*, 1 Bro. 269; but Lord Eldon on many occasions expressed his regret that effect had been given to them, —viewing them not only as pregnant with hazard to those who relied upon them, but as being inconsistent with the policy, if not opposed to the words, of the Statute of Frauds. A very recent case before Vice-Chancellor *Knight Bruce* is illustrative of the force and truth of Lord Eldon's observations, and is curious also as showing us that the property of those who are especially denominated wards of the Court

of Chancery, is not always secured for their advantage.

In 1830, a person named Cock, a cabinet maker at Bristol, married Clarissa Foxon, a ward of the court. As the young lady was entitled to considerable property, and was of a condition in life superior to that of her husband, it was resolved by the friends of the married parties that Cock should relinquish cabinet making and become a timber merchant,—an occupation for which his previous experience seemed to qualify him. With this view, it was thought desirable that a house should be purchased for himself and his wife, and that he should have 1,000*l.* to set him up in his new business. Accordingly, upon an application to the court, the master reported his approbation of this scheme; and it was thereupon referred back to him to approve of a settlement, and an indenture was executed by the husband and wife, (who was then of age,) whereby he covenanted with trustees that the house and furniture about to be purchased with a sum of 2,000*l.*, (of the wife's money,) should by the husband be conveyed to the trustees, in trust for the wife for life, and to her separate use during coverture, with remainder to the children in strict settlement, and an ultimate limitation to the husband in fee, should he survive his wife and have no children. The due execution of this instrument being certified by the master, the sum of 3,000*l.* was, on the 2nd August, 1831, paid by the Accountant-General to Mr. Cock, the *ci-devant* cabinet maker, now timber merchant.

And here it is impossible for us to pass over this proceeding without noticing its laxity,—furnishing, as it does, a proof that the court which above all other establishments is supposed to evince prudence and sagacity in the management of property thrown upon his care, and which is supposed to be especially vigilant in watching over the interest of wards, does nevertheless occasionally betray symptoms of slumbering at its post. This money—we speak of the 2,000*l.* intended to purchase the house and furniture—ought not to have been handed over to Cock. It evidently should have been paid to the trustees, and they should have seen to its proper application. Now what was the consequence of giving it to Cock? That individual, after helping himself to 100*l.* of it for present uses, deposited the residue, 2,900*l.*, in Stuckey's banking house, with

whom he forthwith opened an account. In the course of a single month he drew out the whole of this sum, except 4*l.* 14*s.* 6*d.*, by drafts for various amounts. It appears, however, that he actually did purchase a house,—but he had the conveyance made to himself in fee; and this house he and his wife occupied for some time. The money being soon dissipated, he applied to the bankers for an advance, as a security for the repayment of which, he deposited with them the title deeds of the house to which we have adverted. In reliance on this deposit, they honoured his drafts to the extent of 376*l.* Cock soon afterwards became insolvent; whereupon the trustees, having received an intimation of the bankers' claim, obtained from Cock a conveyance of the mortgaged premises.

The bill was filed by the banking company, praying that they might be declared equitable mortgagees of the house in question. The trustees were defendants. They contended that the house having been (as they alleged) clearly bought with the 2,000*l.* of trust money, their equity was prior to that of the bankers; who, however, denied that there was any evidence upon which the court could hold that the drafts of Cock were to be attributed to any specific portion of the money originally paid to him.

The Vice-Chancellor Knight Bruce dismissed the bill, making the following observations:—

The house in question is admitted to have been purchased with part of the 3,000*l.* The purchase is admitted to have been proper, and in due performance, so far, of the purpose for which the 2,000*l.* had been entrusted to Mr. Cock, namely, to purchase a suitable house for himself and family. The 1,000*l.* beyond the 2,000*l.* was to be applied for the purpose of establishing himself in the business of a timber merchant. Each part of the money was thus appropriated to a particular object. The money was received by him in London on the 2nd of August. He seems to have retained 100*l.*, and paid the remaining 2,900*l.* into the bank represented by the plaintiff.

Upon the 25th of August he completes the purchase of the house, and pays the purchase money by delivering a cheque of that date, the 25th of August, upon his bankers, on which day his credit with the bank consisted of the 2,900*l.* and a short bill for 50*l.* The only cash, however, which had been paid to his credit was the 2,900*l.* This being the whole of his account on the credit side, there had been drawn out before this date the sum of 930*l.* 7*s.* 10*d.* The question, I apprehend, which, if the matter were before a jury, is this:—The purchase having been made out of the 3,000*l.*, what is the just inference of facts with respect to the portion of money out of which the purchase was made? I think that the just and unavoid-

\* The addition of the word "merchant" implies dignity. Horne Tooke's father was a poultry man in Newport Market; but, dubbing himself a "Turkey merchant," he passed for a gentleman, and sent his celebrated son to Westminster School, then only resorted to by the shoots of aristocracy.

able inference is, that the payment for the house was made out of that part of the money which it was proper and right so to apply, that is to say, the 2,000*l*. I think, therefore, that at the moment of the purchase a trust was fastened upon the property. Consistently with all the authoritative decisions since the Statute of Frauds, the estate was bound by the trust. Cock was as completely a trustee of it as if he had executed a declaration of trust, not conveying the legal estate. The trustee thus holding the trust property, pledges it for a debt of his own. According to the principles of this court, and the course of decision, the prior trust must prevail.

The bankers, upon this intimation of his Honour's opinion, undertaking to deliver up the title deeds to the trustees, the bill was dismissed without costs. But the case is instructive, as showing the danger of depending, (as bankers too often do,) on these equitable mortgages.

## POINTS IN COMMON LAW.

### ERROR DOES NOT LIE UPON AN INTERPLEADER ISSUE.

OUR readers are aware, that by a provision contained in the late "Act to amend the Law concerning Games and Wagers,"<sup>a</sup> a writ of summons, the form of which is provided by the act, is substituted for the anomalous and somewhat objectionable form of a feigned issue, founded upon a supposed wager between the parties. There are other anomalies, however, incidental to the proceedings under feigned issues, by which litigants are deprived of their common law rights, and which appear hitherto to have escaped the notice of the legislature.

The Court of Exchequer Chamber lately decided,<sup>b</sup> that a writ of error will not lie upon a judgment entered up on a feigned issue under the Interpleader Act, (1 & 2 W. 4, c. 58;) and as questions of jurisdiction are peculiarly important to the practitioner, not only as they affect the rights of all classes of suitors, but also because an appeal to an incompetent tribunal is an error admitting of no amendment, and often not discovered until a cause is ripe for adjudication, a brief notice of the facts and principles upon which this decision was arrived at, can scarcely be considered unacceptable.

In the case referred to, a question of property arose between the assignees of a bankrupt named E. A. Birch, and King, an execution creditor, and the sheriff having applied to a judge at chambers under the Interpleader Act, an issue was directed, in which the assignees were the plaintiffs, and the execution creditor (King) defendant, the issue for trial being, whether certain goods seized by the sheriff were at the time of the levy the goods of the assignees, or liable to seizure as being the goods of the bankrupt. The jury found the issue for the plaintiffs, with 1*s*. damages and 40*s*. costs, and judgment was entered up by the plaintiffs in the Court of Queen's Bench upon this verdict, under the 7th section of the statute. A bill of exceptions was tendered to the ruling of the learned judge (*Wightman*) upon the trial of the issue, and a writ of error afterwards sued out to the Exchequer Chamber.

Upon a motion to quash the writ of error, two questions presented themselves, both of them deserving of consideration. The first point was, whether any writ of error lay on a judgment under the Interpleader Act? And assuming that no writ of error would lie, the second question was, whether the court of error had power to quash the writ directed to it.

On the part of the plaintiff in error it was contended, that the object of the act was to protect the sheriff, and other persons standing in the position of stakeholders, and that it never could have been the intention of the legislature by this act, to deprive the litigant parties of the right of tendering a bill of exceptions, and bringing a writ of error, to which they would respectively have been entitled if allowed to bring their actions against the sheriff or stakeholder. On the other hand it was observed, that the judgment entered up on an interpleader issue was unlike an ordinary judgment; that the issue was only directed to decide certain facts for the information of the court, and that the machinery of a court of error was inapplicable to a feigned issue, as exemplified by the circumstance, that the discretion as to costs was conclusively vested in the court below, so that if the costs awarded by the court below were paid, the court of error could not grant restitution; which showed that the words "final and conclusive" in the 2nd section, meant final and conclusive without a writ of error.<sup>c</sup>

Upon the second point it was argued, that the jurisdiction of the court was to review the proceedings, not to stop them *in limine*, and that although the Court of Chancery had the power to quash a writ of error for any defect on the face of it, or because it improperly issued to remove a record which ought not to have been removed, the court of error had no power to quash except for some fault on the face of

<sup>a</sup> 8 & 9 Vict. c. 109, s. 19. See the clause, *verbatim*, p. 458, of the last volume.

<sup>b</sup> *King v. Simmonds and others*, Law J., vol. 14, p. 248, Q. B.

<sup>c</sup> It was conceded that the only case in which the court of error had entertained a bill of exceptions, on a feigned issue, was a case of *Armstrong v. Lewis*, 2 Cr. & M. 274, which was an issue by consent, and no objection taken to the jurisdiction.

the writ itself. To this it was answered, that where a writ of error does not lie, the proper mode of proceeding is to quash the writ, inasmuch as the point to be decided is not, whether the judgment was right or wrong? but whether the record was properly brought to the court of error from the court below. It was also observed, that in the present case there was a variance between the writ of error and the record, the writ alleging an action and the record showing there was no action: upon this ground it was insisted that the writ ought to be quashed under the stat. 4 Anne, c. 16, s. 25.

The judgment of the Court of Exchequer Chamber, (consisting of the judges of the Common Pleas and Barons of the Exchequer,) was delivered by *Tindal C. J.*, who observed, that the object of the Interpleader Act was to give a speedy and less costly remedy than by a bill in equity. To effect this object an equitable jurisdiction and an extensive discretion was vested in the court or judge, which was necessarily accompanied by a sacrifice of some of the rights which the litigant parties would have had if there had been no interpleader. For example, the issue may be narrowed to a point, compulsory admissions required, and matters not admissible in ordinary actions ordered to be received in evidence. These were *pro tanto* infringements on the strict rights of parties, and in like manner the court was of opinion that the legislature did not intend to give the litigant parties the power of bringing a writ of error. The 2nd sect. of the stat. 1 & 2 W. 4, c. 58, enacted, "that the judgment in any issue directed by the court or judge, should be final and conclusive," but this provision was probably inserted to avoid the doubt which would have arisen if the statute provided that the verdict should be final, for then it would have been questionable if the court would have any power to review the verdict or set it aside; but where the court gave judgment, it might be presumed that the verdict was satisfactory, and the case finally disposed of. In effect, the feigned issue and judgment thereon under the Interpleader Act, was no more than an interlocutory judgment whereon the court might subsequently act in disposing of the rights of parties. In this respect it resembled an ordinary feigned issue, directed by a court of equity, on which it was admitted there could be no writ of error or bill of exceptions. For these reasons the Court of Exchequer Chamber determined that no writ of error lay on the judgment signed in this case.

Upon the second point, the Court of Exchequer Chamber was of opinion, that there was power to quash the writ as useless, when it appeared that the record sent up was not one which by the commission contained in the writ of error, the court had power to examine. Upon comparison of the writ and record sent up in pursuance of it, there appeared to be no judgment corresponding with that stated in the writ. The writ was to examine the errors in an alleged judgment in an action between the parties: the record produced disclosed no

judgment in an action. Consequently the court had no power by its commission to decide whether there was any error or not, and the proper course was to quash the writ as having nothing to operate upon, and as being idle and useless.<sup>d</sup>

The rule was therefore made absolute to quash the writ of error, but as the matter decided involved a very nice disputable point, the rule was made absolute without costs.

#### WHAT ARE "PARLIAMENTARY TAXES," IN A LEASE OR AGREEMENT.

Considering how frequently a provision is found in leases, that the lessee shall pay all parliamentary taxes, it would not have been surprising if it had been long since determined what taxes are comprised within this description. It appears, however, that the point was expressly determined for the first time, in a case decided in Trinity Term last by the Court of Exchequer.<sup>e</sup>

The plaintiff in the case referred to, was the tenant of a house in Goswell Street, under an agreement, by which he bound himself to pay "all parliamentary and parochial taxes." During the tenancy, the plaintiff was duly assessed to the sewers rate in the sum of 15s., which he paid in 1844. The defendant, as landlord, subsequently demanded the rent due at Michaelmas, which the plaintiff tendered, less the sum paid by him as sewers rate. The landlord refused to receive the rent with this deduction and distrained, upon which the plaintiff brought the present action. The facts came before the court in the form of a special case, the only question being, whether the plaintiff under the terms of the agreement was entitled to deduct the 15s. paid by him for sewers rate.

On the part of the plaintiff it was argued, that sewers rate could not be considered a parliamentary tax, because it was not imposed directly by parliament like the income or window taxes, and the case of *Brewster v. Kitchell*,<sup>f</sup> was cited, in which Lord Holt said:—"There be other taxes not parliamentary, as repairs of churches, commission of sewers," &c. On the other hand, it was contended, that sewers rate was a parliamentary tax, inasmuch as it was imposed by authority of parliament, and a modern decision of the Court of Common Pleas was referred to,<sup>g</sup> in which the land tax redeemed was holden to be a parliamentary tax. In the course of the argument, the case of *Walter v.*

<sup>d</sup> The authorities referred to in the judgment of the court on this point were *Snook v. Mattock*, 5 Ad. & El. 239, and *Tolson v. Kaye*, 7 Sco. N. R. 222.

<sup>e</sup> *Palmer v. Earlth*, 14 L. J. Exch.

<sup>f</sup> 2 Salk. 615; Lord Raym. 318.

<sup>g</sup> *The Governors of Christ's Hospital v. Harild*, 2 Man. & G. 707.



*Andrews*,<sup>1</sup> was relied on by the counsel on both sides, as an authority. In that case the defendant was tenant of certain marsh land in Kent, and by the terms of an agreement, undertook to discharge "all outgoings whatsoever, rates, taxes, scots, &c., whether parochial or parliamentary." The question was, whether sewers rates fell within the terms of the agreement, and the court thought it did, because, although the language of *Lord Holt in Brewster v. Kitchell* raised a doubt whether it could be considered a parliamentary tax, yet when such extensive words as "all outgoings, rates, and scots" were found in the agreement, the sewers rate was included.

The Court of Exchequer, in deciding the principal case of *Palmer v. Earith*, distinguished it from *Waller v. Andrews*, because in that case the tenant undertook to pay "all outgoings," and relied mainly on the language of *Lord Holt in Brewster v. Kitchell*, which was a direct authority that sewers rate was not to be considered a parliamentary tax. A parliamentary tax was one imposed directly by act of parliament. Many taxes were imposed by authority of parliament, but yet were not parliamentary taxes—such as county rates, poor rates, &c.<sup>1</sup> As to the land tax, the act of parliament gave the party redeeming a remedy against the tenant. Assuming that sewers rate was not a parliamentary tax, the plaintiff (*Palmer*) was not bound to pay his rent without deducting from it the amount paid by him for sewers rate. As he had tendered a sufficient sum at the time of the distress, the defendant acted wrongfully in proceeding after the tender. The court, therefore, directed the judgment to be entered for the plaintiff.

## LAW OF MARRIAGE.

### DUKE OF SUSSEX'S CASE.—DECREE OF THE COUNCIL OF TRENT.

THE question in this case, our readers will remember, was, whether the marriage of the Duke of Sussex with the Lady Augusta Murray, at Rome, was valid by the *lex loci*. In other words, whether a marriage of two protestants, celebrated in the papal dominions, without compliance with the Romish ritual, would be held binding at Rome. The answer of Dr. Wiseman gives a view of the matter entirely new to English lawyers. He observes :<sup>2</sup>—

"The law of the Council of *Trent* is, that a marriage, to be valid, must be in the presence of the parish priest and two witnesses. The Council of *Trent* does not point out the parti-

cular form of the ceremony of marriage; the *Roman* ritual prescribes that. To make a marriage lawful, it would be necessary to conform to the *Roman* ritual, but it would be valid and binding though the forms were not observed; but the parties would be subject to censure in the Ecclesiastical Courts for illegal proceedings. It would not be required that a marriage which had been so celebrated irregularly should be repeated: it would be indissoluble.

"I never heard of any attempt being made by two protestants to be married according to the catholic ceremony in *Rome*, or before the parish priest; nor do I believe that they would be permitted to avail themselves of the law. The parish priest would not be under an obligation to solemnize the marriage of two protestants. There has been no regulation on the subject, nor can I refer to any decree relating to it. But supposing a marriage of two protestants, celebrated at *Rome* in the presence of a protestant clergyman, according to the *English* protestant ritual, should afterwards come before a tribunal there for a decision upon it, I have no hesitation in saying that the tribunal would pronounce for the validity of the marriage. Such persons so married, if they afterwards professed the *Roman catholic* faith, would not be required to be married again, nor to do any act to confirm the marriage; nor would they be allowed to separate, nor could either of them marry again during the life of the other. The children of such a marriage would be deemed legitimate. I believe that such a marriage would not subject the parties to any ecclesiastical censure. My decided opinion is, that if parties were married according to the forms which they considered, in accordance with their religious opinions, binding upon them as a matrimonial contract, the law would consider them as man and wife, and would not allow a separation. If two persons married according to the form of their own religion, they would undoubtedly be held as lawfully married. If the parties themselves considered the marriage sufficient, and if in the opinion of persons of character, of their own country and religion, it was considered equivalent to a marriage,—as if two *Scottish* persons married according to the law of their country,—it would on that basis be considered sufficient and binding.

The decree of the Council of *Trent*, declaring void all marriages which are not celebrated *coram paroco* and two witnesses, is not binding in any country in which that decree has not been duly promulgated,—but there the old canon law still prevails as to the marriages of catholics. The decree in its terms makes no distinction between *Roman catholics* and protestants, but practically it does not extend beyond the former; and its object was, to do away with a great practical abuse respecting marriages among *Roman catholics*, and not in any way to strike at protestants.

<sup>1</sup> 3 Mees. & W. 312. <sup>2</sup> 42 Geo. 3, c. 116.

<sup>3</sup> 11 Cla. & Fin. 764.

## PEERS OF THE REALM AND TEMPORAL LORDS.

THE existing peerage of the united kingdom of Great Britain and Ireland, is a body materially different from the ancient baronage of England.

Before the union with Scotland, the term "peer of the realm" was used in England as the distinguishing appellation of each of the "temporal lords of parliament."

The union however of England and Scotland first, and of Great Britain and Ireland afterwards, have created a clear distinction between the character of "peer of the realm" and that of "temporal lord of parliament." For when the union of England and Scotland was accomplished in the reign of Queen Anne, all the adult peers of the realm of England were entitled to writs of summons in the character of temporal lords of the parliament of England as that parliament was then constituted. But there are now no longer any peers of the realm of England; inasmuch as by the union with Scotland, England and Scotland ceased to be distinct realms; and all the peers of the realm of England, and all the peers of the realm of Scotland, became by force of that treaty of union, peers of the new kingdom of Great Britain; but with this qualification, namely, that such of them as had been peers of Scotland did not become "lords of parliament" of that new kingdom, a representative arrangement having been introduced as regarded Scotland, whereby sixteen elected peers of that kingdom were to represent the rest during the continuance of the parliament.

The union of Great Britain and Ireland produced a change in some respects similar, in others different. Twenty-eight of the peers of Ireland are lords of parliament. They are elected to represent the rest of the Irish peers; but their election is not, as in the case of Scotland, for the continuance of the parliament, but for life. A power is also reserved to the crown to create new peers of Ireland under certain circumstances;\* and the peers so created become part of the whole body of peers of the united kingdom of Great Britain and Ireland, though not by their creation lords of parliament, and though, by the express terms of their creation, made peers of Ireland only.

## CHANCERY TIME TABLE.

WE now conclude this Table, showing the various times of proceeding throughout a suit in chancery, compiled from the orders of court.\*

\* By the Act of Union, (39 & 40 Geo. 3, c. 67,) her Majesty may not only make promotions in the peerage of Ireland, but may create new peerages of that country. However, no new peer of Ireland can be created until three old peerages shall have become extinct.

\* See Kennedy's Code of Chancery Practice. 2nd edition.

## 26. AMENDING THE BILL.

Amendments to be made within fourteen days from the date of the order, unless order obtained to enlarge the time.

Ord. 16, Art. (34), & Ord. 114, Art. (3).

When order made without prejudice to an injunction within seven days from the date of the order . . . Ord. 16, Art. (35).

(For time to answer amended bill, see Pleading, §c. 12.)

## 27. COMMON INJUNCTION ON AMENDED BILL.

Defendant to plead, answer, or demur, to avoid a motion for an injunction within eight days after an appearance to an amended bill.

Ord. 16, Art. (36).

Plaintiff may obtain common injunction on amended bill for want of appearance on or after the expiration of eight days from service of subpoena. Ord. 16, Art. (3), No. 3, & Ord. 59.

For want of answer on or after the expiration of eight days from appearance.

9th May, 1839, Ord. 3, and 8th May, 1845,

Ord. 16, Art. (36).

Defendant to move to dissolve common injunction after bill amended without prejudice to the injunction, immediately, without answer, on notice . . . 8th May, 1845, Ord. 60

## 28. TRAVERSING NOTE.

May be filed after the expiration of time for pleading, &c. to original, supplemental bill, or bill amended before answer . . . Ord. 52.

To bill amended after answer . . . Ord. 53.

After the expiration of time for putting in further answer . . . Ord. 54.

Immediately after demurrer or plea to the whole bill overruled, if no time given, or after the expiration of time given . . . Ord. 55.

## 29. FILING REPLICATION, OR SETTING DOWN CAUSE ON BILL AND ANSWER.

Plaintiff to file replication or set down cause on bill and answer within four weeks after the answer or the last of the answers is deemed sufficient, or of the filing of traversing note.

Ord. 16, Art. (37), & Ord. 144, Art. (1).

After bill amended and not required to be answered, where no answer filed and no warrant for time served, after eight and within fourteen days from notice of amendment served.

Ord. 16, Art. (39), & Ord. 115, Art. (1).

Where time to answer refused by the Master, within fourteen days after such refusal.

Ord. 16, Art. (40), & Ord. 115, Art. (2.)

Where answer filed, within fourteen days after answer filed, unless leave obtained to except or amend bill.

Ord. 16, Art. (41), & Ord. 115, Art. (3).

## 30. COMMISSION TO EXAMINE WITNESSES.

Plaintiff to give notice of intention to sue out commission within two days after filing replication . . . Ord. 95.

Any defendant may give notice of intention to sue out commission after two days from replication in default of notice from plaintiff.

Ord. 96.

Warrant to name commissioners not to be applied for until after four days from replication filed. Ord. 16, Art. (42) & Ord. 98.

Warrant to be returnable in two days. *Ibid.*

Certificate of nomination of commissioners to be filed at latest on the day after its date.

Ord. 101.

Office copy to be taken to clerk of records and writs within two days from the date of the certificate *Ibid.*

Commission to be returnable without delay.

Ord. 94.

To be sealed on the day or the day after office copy received by record and writ clerk,

Ord. 101.

To be obtained within six days after the date of Master's certificate Ord. 102.

To be delivered to the commissioners within one week after the teste Ord. 101.

### 31. EXAMINATION OF WITNESSES.

Witnesses to be examined within two months after replication filed, or if time expires in long vacation, before second day of ensuing Michaelmas Term Ord. 16, Art. (43).

### 32. PASSING PUBLICATION.

Publication to pass without rule two months after replication, or if time expires in the long vacation, on the second day of ensuing Michaelmas Term, unless time enlarged.

Ord. 16, Art. (44), & Ords. 111, & 112.

### 33. SETTING DOWN CAUSE.

Plaintiff to set down cause and serve subpoena to hear judgment within four weeks after publication passed, unless time enlarged.

Ord. 16, Art. (45), & Ord. 114, Art. (4).

Defendant may set down cause after the expiration of four weeks from publication passed.

Ord. 116.

### 34. SUBPENA TO HEAR JUDGMENT.

Not to be returnable at any time less than one month from the teste Ord. 16, Art. (46).

To be served at least ten days before hearing.

*Ibid.*

To be served within four weeks after publication passed Ord. 16, Art. (45).

### 35. DISMISSING BILL.

Defendant may move to dismiss where plaintiff has undertaken to reply to plea, after four weeks from date of undertaking.

Ord. 114, Art. (2).

Four weeks after the answer or last of the answers is deemed sufficient or traversing note filed. Ord. 16, Art. (39), & Ord. 144, Art. (1).

Motion cannot be made until after the expiration of the time for obtaining an order to amend.

Ord. 118.

After fourteen days from the date of order to amend, (if bill not amended,) unless time enlarged.

Ord. 16, Art. (43), & Ord. 114, Art. (3).

After four weeks from publication passed, if cause not set down and subpoena to hear judgment served.

Ord. 16, Art. (45), & Ord. 114, Art. (4).

### Where no answer required to amended bill.

If defendant does not answer, after fourteen days from notice of amendment served.

Ord. 16, Art. (39), & Ord. 115, Art. (1).

If defendant applies for time, after fourteen days from Master's refusal to grant same.

Ord. 16, Art. (40), & Ord. 115, Art. (2).

If defendant answers, after fourteen days from answer filed, and no special order for leave to amend or except.

Ord. 16, Art. (41), & Ord. 115, Art. (3).

### 36. MAKING ABSOLUTE DECREE ON BILL TAKEN PRO CONFESSO.

(For motion to take bill pro confesso, *vide ante*, "Taking Bill pro confesso," 15.)

Plaintiff may move to make absolute decree on a bill taken *pro confesso*, not already absolute, where decree served within the jurisdiction, after the expiration of three weeks from service of a copy thereof, and notice under Ord. 86.

Ord. 90, Art. (1).

Where decree served without the jurisdiction, after the expiration of the time limited in the notice accompanying the same, which time is to be appointed by the court under Order 87.

*Ibid.* Art. (2).

Where defendant has not been served with a copy of the decree, after the expiration of three years from the date of the decree.

*Ibid.* Art. (3).

(See also *Contempt Act*, 44.)

### 37. OPENING DECREE ON BILL TAKEN PRO CONFESSO.

Defendant (having a case upon merits not appearing in the bill) may move to open decree not absolute on a bill taken *pro confesso*, at any time before it has been made absolute (as to which, see above, 36) Ord. 91.

(See also *Contempt Act*, 44.)

### 38. NOTICES OF MOTION AND PETITIONS.

To be served two clear days before day named in the notice for hearing. Ord. 16, Art. (47).

Notices of motion to assign guardian to an infant or a person of weak or unsound mind, to be served six clear days before day named in the notice for hearing. Ord. 16, Art. (48).

### 39. NOTICES AND OTHER PROCEEDINGS FORMERLY SERVED AT THE SIX CLERKS' OFFICE.

To be served before eight o'clock in the evening 26th Oct. 1842, Ord. 22.

### 40. LUNACY CONSENT ORDERS.

Two days' notice of application for, to be given at the office of Secretary of Lunatics.

Mic. T. 1828.

### 41. OFFICE COPIES OF AFFIDAVITS.

To be ready in forty-eight hours after spoken. 8th May, 1845, Ord. 127.

### 42. SPECIAL INJUNCTION TO RESTRAIN TRANSFER OF STOCK, &c., AFTER DISTINGUISHING LODGED.

To be obtained within eight days after request to the bank to allow transfer or payment.

17th Nov. 1841, Ord. 4.

### 43. DECREES AND ORDERS.

To be entered within a week after left for entry. . . . . 21st Dec. 1833, Ord. 30.

To be taken into Masters' office within two months after pronounced. . . . .

3rd April 1828, Ord. 48.

Executions upon by *fi. fa.*, &c., where for payment of money, may be issued after one month from their being passed and entered. . . . .

10th May, 1839, Ord. 1.

Office copies to be ready in forty-eight hours after bespoken. . . . . 31st Dec. 1833, Ord. 30.

### 44. CONTEMPT ACT.—11 Geo. 4, & 1 Wm. 4, c. 36.

#### *Proceedings against absconding defendant.*

Order for defendant to appear to be inserted in London Gazette and published in parish church within fourteen days after the making thereof . . . . . sec. 1.

Defendant must have been in England within two years before subpoena issued against him. . . . .

sec. 9.

Defendant to be served with copy decree if he returns within seven years, or his representatives if he die within seven years and real or personal estate sequestrated . . . . . sec. 5.

Defendant may petition to be admitted to answer, and have the cause reheard, within six months after service of copy decree, or if not served within seven years after the making thereof . . . . . sec. 7.

Decree to be absolute six months after service of copy . . . . . sec. 6.

If not served, after seven years from the making thereof . . . . . sec. 8.

#### *Proceedings against defendant in custody.*

Court may order appearance to be entered for defendant fourteen days after notice to him in writing . . . . . sec. 11.

Writs in process of contempt may be returnable immediately where party in contempt resides or is in London or within twenty miles thereof; in other cases they may be returnable in vacation without order, provided there be fifteen days between the teste and return of each writ . . . . . sec. 15, R. 3.

There must be twenty-eight days between the day the defendant is committed or remanded and the return of the *habeas corpus* upon which the defendant is brought up for the purpose of the bill being ordered to be taken pro confesso. . . . . sec. 15, R. 2.

Defendant, if in prison, must be brought up within thirty days of his being in custody or detained; or if in custody of the serjeant-at-arms or messenger, within ten days after his being taken into custody, [but if the last of such days happen out of term within the four first days of the ensuing term, (*sed vide ante*, 14)] . . . . . sec. 15, R. 5.

Plaintiff may with leave put in an answer for defendant after ten days' notice to him given after the expiration of twenty-one days from his being brought up . . . . . sec. 15, R. 11.

Plaintiff must cause an appearance to be

entered for defendant in contempt for want of appearance within fourteen days after the period computed from expiration of twenty-one days from his being lodged in prison, or an attachment lodged if already in prison, within which he may be able to enter such appearance. . . . . sec. 15, R. 13.

Plaintiff must obtain an order for taking the bill pro confesso within six weeks after the period computed from the expiration of two calendar months after defendant is lodged in prison, or an attachment lodged if already in custody, within which he he may be able to take the bill pro confesso . . . . . sec. 15, R. 13.

### DECISIONS UNDER THE SMALL DEBTS ACT.

In a case of *Ponder v. Abrahams*, at the Bankruptcy Court, before Mr. Commissioner Goulburn,\* the plaintiff, who had obtained a judgment of one of the superior courts, summoned the defendant under the provisions of the act 8 & 9 Vict. c. 127; and upon examination of the defendant it appeared, that at the time when he contracted the debt in question, the consideration for which was cigars, he was already in such a state of pecuniary embarrassment as to be incapable of paying his existing creditors five shillings in the pound on their respective debts.

The learned commissioner thought, that under these circumstances the defendant was a person who had "wilfully contracted a debt without reasonable prospect of being able to pay it," within the terms of the first section of the act. He therefore ordered the defendant to be committed for forty days to the county gaol. The learned commissioner at the same time intimated, that the order of committal must be drawn up by the plaintiff's attorney, who was responsible for its sufficiency, and through whom it must be executed.

We have reason to believe, that this is the first decision upon the provision of the statute applicable to persons contracting debts without a reasonable prospect of being able to pay them, and for that reason it is deemed deserving of notice.

### SELECTIONS FROM CORRESPONDENCE.

#### SMALL DEBT PRACTITIONERS.

A correspondent at Birmingham has sent us a specimen of the first fruits of the "Act for Recovery of Small Debts." It requires little

\* On Saturday, November 8.

comment, but is a palpable evidence of the injurious effect of these *cheap-law* acts. As we have always predicted, these petty courts will give birth to an inferior class of practitioners,—equally dangerous to the community and disgraceful to the profession.

We fear we shall soon have occasion to return to this subject.

The following is the production of one of these advertising attorneys :—

*"Act for the Recovery of Small Debts."*

"Whereas by the act of 8 & 9 Vict., debts under 20l. may be recovered expeditiously, and with effect, but in consequence of the many niceties attending the proper reading and understanding of the act, numerous persons are deterred from putting the same in force—*This is to give notice*, that an *attorney* of ten years' standing will attend at his offices, No. 35, Bath-row, Birmingham, and give advice upon all cases within the province of the said act *gratis*, the usual charge of 2s. in the pound only being had out of such debts as may be recovered.

"Attendance from two o'clock till five every day."

#### RAILWAY PROVISIONAL COMMITTEES. — LIABILITY TO COSTS.

*To the Editor of the Legal Observer.*

SIR,—A question has arisen as to how far parties on the provisional committee in railway schemes are liable to costs incurred previously to obtaining an act, and previously to complete registration, where the bill is thrown out or abandoned.

It appears to be a very usual thing for parties who are not in the slightest way interested, and who have not even taken a share, to allow their names to be placed on the provisional committee, and appear in the prospectus.

Can any of your readers inform me whether these parties (having authorised their names to be used) are liable to any costs or expenses incidental to obtaining the bill, or in any way relative to carrying out the scheme, in the event of the application to parliament being unsuccessful, or the scheme being abandoned previously to complete registration.

R. W. P.

#### APPLICATIONS FOR ADMISSION AS ATTORNEYS.

*Last day of Michaelmas Term, pursuant to Judges' Orders.*

*Clerk's Name and Residence.*

*To whom Articled, Assigned, &c.*

Belfour, Edmund, jun., 39, Lincoln's Inn Fields . . . . .	Edward Archer Wilde, 21, College Hill.
Brewis, George, Newcastle-upon-Tyne . . . . .	George Tallentire Gibson, Newcastle-upon-Tyne.
Branson, Thomas Sands, 33, Store Street; and Sheffield . . . . .	Thomas Branson, Sheffield.
Burbury, Daniel Winter, 4, Wharton Street; and Wootton Grange, Warwick . . . . .	Jackson Walton, Warnford Court.
Finnis, Robert, Turnham Green . . . . .	James Robertson, Southampton Buildings. Robert Fitz-Finnis, Turnham Green.
Hodgetts, Thomas, 5, River Street, Aston, near Birmingham . . . . .	Clement Ingleby, Birmingham.
Harris, Albert Domett, 111, Regent Street, Lambeth . . . . .	Frederick Carritt, 10, Basinghall Street.
Matthews, Edwin D. Thomas, 6, Canterbury Street, Lambeth; and 82, York Road, Lambeth . . . . .	Edward Steward, Norwich.

*To be added to the [Hilary Term] List pursuant to Judges' Orders.*

Mantell, Alexander Houston, Farringdon . . . . . J. William Wall, Devizes.

*To be admitted on the last day of Michaelmas Term, pursuant to Rule of Court.*

\* Cunliffe, Robert, 1, Upper Gower Street; and Manchester . . . . . Thomas Potter Cunliffe, Manchester.

#### APPLICATIONS FOR RENEWAL OF ATTORNEYS' CERTIFICATES.

On the last Day of Michaelmas Term, 1845.

*To be added to the List pursuant to Judges' Orders.*

Livett, Andrew Lewis, 14, Trinidad Place, Liverpool Road, Islington.  
Powell, Horatio Nelson, Cheltenham.

## APPLICATIONS TO BE ADMITTED AS ATTORNEYS.

Hilary Term, 1846.

## Queen's Bench.

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Atkinson, Henry, 11, Everett Street, Russell Square . . . . .	Fenton R. Atkinson, Manchester. Thomas Sanders, Temple. John Abbott, Charlotte Street.
Andrews, Richard Bullock, Epping . . . . .	Richard Bullock Andrews, Epping.
Atherton, William Matthew, 21, Penton Place, Kennington Road; and Manchester . . . . .	J. Barlow, jun., Manchester.
Burton, Samuel Crickmer, 14, King's Road; and Little Yarmouth . . . . .	Nathaniel Palmer, Great Yarmouth.
Briggs, John Adolphus, 55, Lincoln's Inn Fields . . . . .	Thomas Briggs, Lincoln's Inn Fields.
Bernard, Edward Westland, 15, Park Street, Grosvenor Square; 12, Bathurst Street, Sussex Sq.; and Clifton . . . . .	George Cooke, Clifton and Bristol.
Bell, John, Danby; Whitby; and Prince's Place, St. James's . . . . .	Thomas Brodrick Simpson, Whitby.
Bloore, James, Leek . . . . .	John H. Hacker, Leek.
Brewis, George, Newcastle-upon-Tyne . . . . .	G. T. Gibson, Newcastle-upon-Tyne.
Brown, Charles, Maidenhead . . . . .	James Smith, Maidenhead.
Barnard, Charles, 5, Guildford Place, Kennington . . . . .	Alfred Mayhew, Carey Street.
Bowen, Charles Burrin, 4, South Buildings, Clapham; Boconnoc; and Plymouth . . . . .	R. Stephens, Plymouth.
Bulmer, Charles, Leeds . . . . .	William Middleton, Leeds.
Burnley, John Wild, 29, Queen Street, Cheap-side . . . . .	Anthony Burnley, St. Austell. David Laing, White Hart Court. P. A. Burrell, White Hart Court.
Branswell, Thomas Vicars, 18, Smith Street, Chelsea; and Howard Street . . . . .	William Woollam, Stockport.
Baldwin, Alexander, 3, Gloucester Street, Queen Square; Settle; and Clithero . . . . .	William Foster, Settle.
Birch, Henry, 13, Church Street, Westminster; and Hadleigh . . . . .	Isaac Last, Hadleigh.
Burrell, Peter Charles, Cranmer Road, North Brixton; Hanger Lane; and Middleton Road . . . . .	P. A. Burrell, White Hart Court. S. A. Beck, Ironmongers' Hall.
Brooke, William Lombe, Cambridge . . . . .	E. Foster, jun., Cambridge.
Cotton, Edward, 36, Dover Road, Leicester; and Farringdon Street . . . . .	Samuel Stone, Leicester.
Clarke, Percy Brooke, 4, Rawstorne Street, Goswell Road; and Dover . . . . .	Stephen Chalk, Dover.
Collier, Thomas George, New Windsor . . . . .	Charles Hird, Upper Marylebone Street.
Cunliffe, Robert, 1, Upper Gower Street; and Manchester . . . . .	Thomas P. Cunliffe, Manchester.
Cotton, Francis Josias, 2, King's Terrace, Pentonville; and Maze Pond . . . . .	Charles Smale, Bideford. Robert Slee, St. John's, Southwark.
Codd, Henry, 30, Arundel Street, Strand . . . . .	William Codd, jun., Maldon. William Batty, Charles Street, St. James's Square.
Charsley, Edward, 21, Bedford St., Bedford Row; Powis Place, Coventry; and Beaconsfield . . . . .	Francis Carter, Coventry.
Curtis, Edward, 12, Montague Street, Russell Square . . . . .	T. M. Cleobury, Sackville Street.
Cranke, Daniel, 11, Arundel Street, Strand; Ulverston; and Grove Street . . . . .	John Cranke, Ulverston.
Cowper, William John, 3, Mornington Crescent; and Canterbury . . . . .	William Sladden, Canterbury. W. H. Wright, Essex Street.
Child, Henry Baylis, 53, Trinity Square . . . . .	G. K. Pollock, Great George Street.

- Caldicott, Henry, 36, Lonsdale Square ; and Dudley .  
 Casterton, Charles James, 11, New Street, Vincent Square .  
 Davies, Alexander Malcolm, 4, Henrietta St., Covent Garden .  
 Daly, Thomas, 30, Mornington Place, Hampstead Road ; Castleblaney, Kingstown, Ireland ; and Liverpool .  
 Dobson, Henry Houle, 7, New Millman St. .  
 Daubeny, William, 50, Upper Albany Street ; and Judd Street .  
 Davies, Rowland A. Griffith, 23, River Street, Middleton Square ; Penzance ; and East Street .  
 Day, John, jun., 26, Edward Terrace, Caledonian Road .  
 Davies, Robert Pavin, 21, Warwick Street, Regent Street .  
 Drew, George Henry, 2, Charlotte Row, Bermondsey .  
 Dacie, William, 3, Foxley Place, Camberwell .  
 Davies, Edward John Cox, Crickhowell .  
 Davies, George Sidney, Crickhowell .  
 Davies, John Price, 15, Cranmer Place, Waterloo Road ; and Welch Pool .  
 Driver, Samuel Neale, Hanover Park, Peckham ; and 7, Wellington St., South .  
 De Boos, Thomas J. Redman, 14, Vale Pl., Hammersmith .  
 Edwards, John, 20, Lincoln's Inn Fields .  
 Ellison, Thomas Michael, 8, Granby Street, Hampstead Road ; Bath ; Great Stanhope Street ; Huntley Street ; University St. ; and Great Quebec Street .  
 England, Richard, 18, Stanhope Street, Hampstead Road ; and Kingston-upon-Hull .  
 Fowler, James, 24, Great Ormond Street, Queen's Square ; Aston ; and Birmingham .  
 France, F. Augustus Harold, 8, County Terrace, New Road .  
 Fraser, Edward John, 24, Sidmouth Street, Regent Square ; Amwell Street ; and Canonbury Street .  
 Fleming, John, Newcastle-upon-Tyne .  
 Fisher, William Richard, 5, Verulam Buildings ; and Gray's Inn Square .  
 Farr, Henry Fuller, 5, Verulam Buildings ; and Gray's Inn .  
 Fletcher, Arthur Piggott, 5, Essex Court, Temple ; and Mortimer Street .  
 Fernihough, Joseph, jun., Nantwich .  
 Fookes, William, 14, Myddleton Square ; Liskeard ; and Goulden Terrace .  
 Friend, James Walter, 20, Burton Crescent ; and Bedford Row .  
 Field, John Joseph, 9, Guildford Street, Russell Square .  
 Footitt, Christopher Carter, 40, Commercial Road ; Newark-upon-Trent .  
 Gotobed, Henry, 2, Amwell Terrace .  
 William Fellows, jun., Dudley .  
 Francis Riddell Reynolds, Great Yarmouth .  
 John Murray, 7, Whitehall Place .  
 D. Davies, Henrietta Street .  
 Edward Bretherton, Liverpool .  
 R. B. Armstrong, Staple Inn .  
 Benjamin Lawrence, Old Fish Street .  
 George A. Crawley, Whitehall Place .  
 Francis Paynter, Penzance .  
 Henry Bradley, Temple .  
 Henry Hayman, Bath .  
 D. Davies, Warwick Street .  
 George Drew, Bermondsey Street .  
 W. S. Dacie, Throgmorton Street .  
 Sir George Stephen, Furnival's Inn .  
 George A. A. Davies, Crickhowell .  
 George A. A. Davies, Crickhowell .  
 C. T. Worsnam, Newtown .  
 J. Jones, Welch Pool .  
 Edward Hugh Edwards, New Palace Yard .  
 Owen Pope Holmes, Liverpool Street .  
 Charles Boydell, Queen's Square .  
 Robert Medcalf, Lincoln's Inn Fields .  
 Edward King, Bath .  
 J. England, Kingston-upon-Hull .  
 G. P. Wragge, Birmingham .  
 John Wood, Falcon Street .  
 L. Acland, Chancery Lane .  
 H. C. Chilton, Chancery Lane .  
 T. Carr & M. L. Jobling, Newcastle-upon-Tyne .  
 J. G. Fisher, Great Yarmouth .  
 Henry Hansell, Norwich .  
 John North, jun., Liverpool .  
 T. K. Hassall, Liverpool .  
 G. Faulkner, Bedford Row .  
 R. C. Edleston, Nantwich .  
 E. H. Pedler, Liskeard .  
 Charles Brutton, Exeter .  
 William Kinsey, Bloomsbury Square .  
 William Whaley Billyard, Budleigh Salterton, Devonshire .  
 S. P. Lamb, Reading .  
 W. Tooke, Bedford Row .

Guy, Henry, Howden . . . . .	J. S. Archer, Ossett. William Allatt, Ossett. William Jacomb, Huddersfield. R. B. Porter, Howden.
Griffiths, William Higford, 36, Lonsdale Sq.; and Chipping Campden . . . . .	John R. Griffiths, Chipping Campden.
Gell, Inigo, 26, Swinton Street, Gray's Inn Road; Devonshire Street; and Lewes . . . . .	F. H. Gell, Lewes. F. T. Gell, Carlton Chambers.
Garnham, Richard Enoch, (articled as Richard only,) 33, Gower Place, Euston Square; and Norwich . . . . .	Thomas Brightwell, Norwich.
Gratrix, Thomas Price, Adelphi Chambers, Monmouth; Beauford Buildings; Vere Street; and Frederick Street . . . . .	James Powles, Monmouth. F. J. Ridsdale, Gray's Inn Square.
Gregory, William, 5, Upper Montague Street . . . . .	Jonas Gregory, Clement's Inn.
Gill, Thomas Husband, 5, Gloucester Street, Bloomsbury; and Devonport . . . . .	James Husband, Devonport; and Gray's Inn Square.
Greenacre, Charles Edward, 19, Swinton St., Gray's Inn Road; Great Yarmouth; East Dereham . . . . .	F. R. Reynolds, Great Yarmouth.
Goolden, Daniel Heythorne, 16, Soley Terrace, Bristol; New Ormond Street; and Gt. Percy Street . . . . .	S. S. Wayte, Bristol. Thomas Griffin, Shelton.
Griffin, Arthur, Shelton; and Carey Street . . . . .	J. R. Elliott, Rochdale.
Hunt, Thomas, Okewood Hall, near Roch- dale; and Rochdale . . . . .	L. Hicks, Gray's Inn.
Hicks, Leonard Hopwood, Paddock Lodge, Junction Road, Kentish Town . . . . .	Thomas Shepherd, Beverley.
Holmes, Joseph Francis, Wakefield Street, Regent Square; and Beverley . . . . .	D. S. Bockett, Lincoln's Inn Fields.
Harris, Henry, 41, Berners Street . . . . .	C. W. Potts, Chester.
Hulme, Joseph, 12, Wakefield Street, Regent Square; Chester; and Essex Street . . . . .	J. H. Adams, Old Jewry Chambers.
Hewson, Frederick, Wrigton; and Balham Hill . . . . .	B. Holme, New Inn. J. James, Wrigton.
Hand, Henry, 12, Wakefield Street, Regent Sq.; Witton; Hertford; and Essex Street . . . . .	Thomas J. Brayne Hostage, Castle North- wich.
Hippisley, Robert Townsend, 9, Thavies Inn; Taunton; and Norfolk Street . . . . .	J. F. Reeves, Taunton.
Harrison, W. George Southey, Waterloo Pl.; Kilborne . . . . .	A. R. F. Rosser, Lincoln's Inn Fields.
Huddleston, John, 18, Thavies Inn; and Whitehaven . . . . .	W. Perry, Whitehaven.
Hughes, John Spier, Ruthin . . . . .	J. Handcock, Mold. William Slater, Manchester.
Hick, John George, 9, Belgrave Terrace, Eaton Square; and Stokesley . . . . .	Henry Hick, Stokesley.
Hitchcock, George, 22, Lower Belgrave Street . . . . .	H. S. Heathcote, Coleman Street.
Haynes, James Haynes, formerly James Haynes Jones, Stamford; Newark-upon- Trent; and Wakefield Street . . . . .	Godfrey Tallents, Newark-upon-Trent.
Hinton, Richard Thomas, 11, Camden Ter- race, Camden Town . . . . .	H. Hinton, Wenlock. R. H. Baines, Gray's Inn Square.
Jackson, Charles, 35, Charlotte Terrace, White Conduit Fields; and Checkheaton . . . . .	Charles Firth, Birstal.
Jennings, John Rogers, 71, Whitechapel Road; and Wanstead . . . . .	David Jennings, Whitechapel.
Judge, James Robert, 21, Margaret Street, Cavendish Square; Ramsgate; and Hunter Street . . . . .	J. B. Judge, Ramsgate. H. Wightwick, Ramsgate.
Jolley, James Hatch, 1, Upper Stamford St. . . . .	J. G. Meymott, Blackfriars Road.
Jones, Thomas Alley, Coburg Place, Ham- mersmith . . . . .	Thomas Eden, Salisbury Street. G. Becke, Lincoln's Inn Fields.
Jones, John Alexander, 13, Union Crescent, New Kent Road; Old Kent Road . . . . .	Lewis Henry Braham, Chancery Lane.



## MICHAELMAS TERM EXAMINATION.

WE lately stated that the 180 notices of admission on the roll of attorneys for this term included 17 persons who had been examined in former terms; but that with the addition of the names of several candidates who have given notice of examination, (but not of admission at present,) the number entitled to be examined, if their testimonials were approved, would be 171. It now appears that 50 have not left their papers, and that the number to be examined will be about 120. This is a large number compared with the last few terms.

The following notice has been issued of the day appointed to swear in solicitors at the Rolls:—

The Master of the Rolls has appointed Monday the 24th day of November instant, at three o'clock in the afternoon, at the Rolls Court, Chancery Lane, for swearing in solicitors.

Every person desirous of being sworn and admitted on that day must leave his common law admission, or his certificate of practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Saturday, the 22nd instant, at three o'clock.

*Rolls, 11th Nov. 1845.*

## DECISIONS ON THE NEW ORDERS IN CHANCERY.

REFERRING to our reports for a decision of the Vice-Chancellor of England on the New Orders of 8th May, we add the following, which we believe may be relied on:—

### SUBPENA TO REJOIN.—REPLICATION.

The judges have decided that in those cases where subpoenas to rejoin have not been served before 28th October, so as to put the cause at issue, the parties shall file their replication in the new form, under the Orders of 8th May. This will have the effect of making publication pass without rules.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.\*

### Rolls Court.

[Reported by SAMUEL MILLER, Esq., Barrister-at-Law.]

### PRACTICE.—RECEIVER.—COSTS.

*The rule which formerly prevailed against receivers originating proceedings is not now imperative; but they will not be allowed*

*costs if any proceedings on their part lead to unnecessary expense.*

THIS suit was instituted for administering the estate of Mrs. Anne Reid, who was the executrix of her late husband, Alexander Reid. On the 19th of Nov. 1844, an order was made that the receiver appointed in the cause should be at liberty to institute a suit in the name of the administrator with the will annexed, of the late Alex. Reid, for the recovery of a bond debt due to his estate from one Edmund Waters, the administrator being first properly indemnified. In pursuance of this order a proper indemnity was settled by the master; but the receiver being advised that he might incur personal responsibility by adopting the contemplated proceedings, presented a petition to the court, whereby, after stating that the institution of a suit for recovery of the debt in question would be attended with great risk and expense, and that in the event of the claim not being established, the estate of the testatrix would be insufficient to satisfy the costs, and he would incur a personal liability, which in his character of receiver he was unwilling to do, he prayed for a reference to the master to inquire, whether it would be for the benefit of the testatrix's estate that the bond debt and security should be sold by auction, and if the master should be of that opinion, then that the same might be sold accordingly.

The plaintiffs, who were infants, and the receiver, appeared by the same solicitor, the receiver being in fact the solicitor's father.

Mr. Kindersley for the petitioner.

Mr. G. Turner, Mr. Boyle, and Mr. J. H. Palmer, for the defendants, objected that the receiver was not the proper party to present such a petition, which should have been presented by the plaintiffs by their next friend; but that if the court held him intitled to do so, only one set of costs should be allowed.

The Master of the Rolls said, that according to the former practice of that branch of the court in the time of Sir John Leach, a receiver was not allowed to originate any proceedings, but that rule was not acted upon in the other courts, and had since been relaxed at the Rolls, and a receiver was now allowed to present a petition in certain cases. In the present case, the Order of November 1844 imposed a certain duty on the receiver, and as he found he could not with safety to himself fulfil such duty, it was right that he should apprise the court of the fact. At the same time the receiver ought not to be the party to present a petition, which might with less expense have been presented by the plaintiffs. His Lordship therefore said, he should make the order asked, but should direct the same to be prosecuted by the next friend of the plaintiffs, and should reserve the costs of the petition.

*Parker v. Dunn. July 24, 1845.*

\* It is deemed sufficient in future to state, at the commencement of each term or volume, the names of the gentlemen who favour this work with reports of cases.

[Reported by E. VANHARTMAN NEALE, Esq., Barrister at Law.]

PRACTICE.—EVIDENCE.—FOREIGN LAW.

*The court will not receive passages cited from the acknowledged authorities for the law of a foreign country, upon a question arising in respect to that law, as evidence of what the foreign law upon that question is, unless the particular passages are deposed to by a witness skilled in the law of that country, as containing the law of that country, upon the question in dispute.*

In this cause, which relates to the right of succession to the estates at Bronté, in Sicily, bestowed by the king of that country on the first Lord Nelson, a question arose in respect to the mode whereby the English court could obtain a knowledge of the Sicilian law. The case came on upon exceptions to the master's report, who had rejected certain passages extracted either from authoritative collections of the Sicilian laws, or from the works of writers received as of authority in the exposition of those laws in the Sicilian courts, because those passages were not supported by the evidence of any person professionally skilled in the laws of Sicily, deposing to them as containing, to the best of his belief, a correct view of the Sicilian law upon the question in dispute. The passages thus rejected were extracted in part from authorities cited by the plaintiff as well as by the defendants,—and which therefore might be regarded as in some sort a cross-examination of the plaintiff's witnesses,—and in part from independent authorities cited by the defendants alone. The evidence of persons skilled in the Sicilian law was adduced to show that the writers cited would be received as of authority in the Sicilian courts; in fact there was no question as to this. Nor was it denied that the court might refer to passages, cited by a witness skilled in the law of a foreign country, from any law or authority, as containing the law of that country upon any particular question, for the purpose of judging for itself whether the passages cited did support the conclusion they were cited to support; and thus, as far as in it lay, checking the fallibility of human testimony. The point raised was, simply, whether the court would allow the acknowledged Sicilian law authorities to be used by English lawyers for the purpose of proving Sicilian law, in like manner as it will allow our own reports and statutes to be used; or whether it was necessary that the particular passages relied upon as showing the Sicilian law upon the point in dispute should be referred to by some witness skilled in the law of Sicily.

*Baron Bode's case*, tried 20th June, 1844, at bar before the Queen's Bench, not yet reported; *Governor Picton's case*, Howell's State Trials, xxx. 466, 491, 511; *Dalrymple v. Dalrymple*, 2 Hagg. Con. Ca. 81; *Trinley v. Viquier*, 4 Moore & Scott, 704; the *Duke of Sussex Peerage case*, 11 Clark & Finelly, 85; *Storey's Conflict of Laws*, § 637; *De Vaux v. Steele*, 8 Scott, 637, 6 Bing. N. C.; *Warren Hastings'*

*case*, 2 Phillips Evid. 123, 9th ed.; *Gage v. Bulkeley*, Ridg. t. H. 276; and *Mostyn v. Farrigas*, Cowp. 174; were cited in the course of the discussion.

Mr. Tinney, Mr. Gardiner, Mr. Roundell Palmer, and Mr. Lewis, for the exceptions; Mr. Hodgson, Mr. Turner, and Mr. Bowyer, for the report.

Lord Langdale, after taking time to consider his judgment, decided that the master was right in refusing to receive the passages in question.

*Lord Nelson v. Lord Bridport*, July 6, 7, 9, & 10, and Nov. 5, 1845.

Vice-Chancellor of England.

PRACTICE.—APPEARANCE.—CONSTRUCTION OF ORDER 29 OF MAY 1845.

*The court will not allow a plaintiff under the above Order to enter an appearance for a defendant who is resident out of the jurisdiction.*

THE bill in this case was filed in July 1842, shortly after which the defendant appeared, and in November 1842 put in his answer. In May 1844 an order was obtained for leave to amend, under which the bill was amended in June 1844, and in 1845 a subpoena was served on the defendant's solicitor to answer the amended bill.

No appearance having been entered to the amended bill, application was now made under the 29th Order of May 1845, by which it is directed, that if any defendant not appearing to be an infant, &c. is, when within the jurisdiction of the court, duly served with a subpoena to appear to, or to appear to and answer a bill, and refuses or neglects to appear thereto within eight days after such service, the plaintiff may, after the expiration of such eight days and within three weeks from the time of such service, apply to the record and writ clerk to enter an appearance for the defendant; and, no appearance having been entered, the record and writ clerk is to enter such appearance accordingly, without special order, upon being satisfied by affidavit that the subpoena was duly served upon such defendant personally, or at his dwelling house or usual place of abode, and after the expiration of such three weeks application is to be made to the court.

The defendant in this case was a native of France, and had been resident in that country since Sept. 1842, where he still was.

Mr. Schomberg submitted, that this was a case in which the court intended that the plaintiff should have the opportunity of entering an appearance for the defendant.

The Vice-Chancellor said, he would consult with the other judges, as he intended to do in all cases where any difficulty occurred as to the construction of the new orders.

Nov. 8.—His Honour said, he had considered the question, and was of opinion that the case was not within the order.

*Marquis of Hertford v. Suisse*. May 8, 1845.

## Queen's Bench.

(Before the Four Judges.)

ACTION ON THE CASE BY A CORPORATION  
AGAINST A TOWN CLERK, UNDER 5 & 6  
W. 4. c. 76, s. 60.

*The statute 5 & 6 W. 4, c. 76, s. 60, imposes certain duties on the town clerk of a borough, and in case of neglect or refusal two justices of the peace have power to determine the matter in a summary way; provided always, that nothing in the act shall prevent or abridge any remedy by action against any person so offending, but such person shall not be sued by action and proceeded against in a summary way for the same cause.*

*Held, that an action on the case would lie at the suit of the corporation against the town clerk, for refusing or neglecting to perform the duties imposed on him by the 60th section; the summary remedy before magistrates not being co-extensive with the injury.*

THIS was an action on the case brought by the corporation of Litchfield against the town clerk, for omitting to render a true account of all matters committed to his charge, by virtue of the 60th section of the Municipal Corporation Act, (5 & 6 W. 4, c. 76.) To this declaration there was a demurrer and joinder.

Mr. Cole, in support of the demurrer.

The 60th section of the 5 & 6 W. 4, c. 76, requires the town clerk to render a true account of all the matters committed to his charge; all monies received and paid, together with proper vouchers; and a list of the persons who shall have paid money for the purposes of the act, &c. And in case he shall refuse or wilfully neglect so to do, two justices of the peace shall have power to hear and determine the matter in a summary way. Provided always, that nothing in this act contained shall prevent or abridge any remedy by action against any such officer so offending as aforesaid; but such officer shall not be sued by action and also proceeded against in a summary way for the same cause. This action cannot be maintained, because the statute has given a summary remedy before magistrates which must be pursued. The distinction seems to be this; where a statute makes unlawful that which was lawful before, and appoints a specific remedy, that remedy must be pursued and no other. *Rea v. Robinson*:<sup>a</sup> *Castle's case*,<sup>b</sup> 1 Saund. 136, note 4. There is no wrongful act on the part of the defendant by which he is liable to an action at law. The proviso at the end of the section is not at variance with this view of the subject, because it leaves things as they were before, and an action of trover, or for money had and received, may still be supported by the corporation against the town clerk.

Mr. Willes, contra.

The detention of these goods will entitle the corporation to sue in this form of action unless prevented by the proviso in the 60th section.

The summary jurisdiction of the magistrates will be found insufficient for the purposes of the corporation. The remedy is not co-extensive with the wrong. The defendant is to keep a list of persons who owe money to the corporation, he might refuse to give up the lists, and allow the Statute of Limitations to run against the corporation. The cases cited on the other side refer to indictments where a duty is imposed by act of parliament. In *Barry v. Arnaud*,<sup>c</sup> a collector of customs was held liable in an action for nonpayment, as for refusing to sign a bill of entry without payment of an excessive duty.

Lord Denman, C. J. It seems to me that the defendant must be held answerable in this action, although there is a summary remedy given by the act, which in some instances may not be made available till an irreparable injury is done to the corporation.

Mr. Justice Williams concurred.

Mr. Justice Coleridge. — For some time I was of opinion that this action could not be supported, and I believe I attached too much importance to the proviso at the end of the section, but upon consideration that seems only to leave matters as they were before. The legislature has thrown a duty on the defendant, and the summary remedy that is given is not co-extensive with the injury. I am therefore of opinion that this action will lie.

Mr. Justice Wightman concurred.

Judgment for the plaintiffs.

*The Mayor, &c. of Litchfield v. Simpson.*  
Q. B. Michaelmas Term, 1845.

## Queen's Bench Practice Court.

## ADMISSION OF ATTORNEYS.

*A party having given due notice of his intention to apply to be examined and admitted in Hilary Term, was, under special circumstances, and upon giving fresh notices forthwith, allowed to be examined and admitted in the Michaelmas Term preceding.*

Henderson moved, that the examiners of attorneys be authorized to examine Robert Cunliffe during the present Michaelmas Term, and that the said Robert Cunliffe be admitted an attorney of this court on the last day of the same term.

The affidavits in support of the application stated, that the applicant had given all the necessary notices of his intention to apply for admission as an attorney of the Queen's Bench in next Hilary Term; that since they were given, on Nov. 3, 1845, a firm of attorneys had offered to take him into partnership, provided he could be admitted an attorney of that court during this (Michaelmas) term; that it would be a serious loss and inconvenience to him if, in consequence of the notices for this term not having been given, he should be prevented from accepting the offer; and that he had served the Secretary of the Incorporated

<sup>a</sup> 2 Burr. 803.

<sup>b</sup> Cro. Jac. 644.

<sup>c</sup> 10 Adol. & Ellis, 646.

Law Society with a notice of his intention to make this application. *Ex parte Twynam*, 3 Jur. 1124, and *In re the Examiners of Attorneys*, 9 A. & E. 728, were cited, as showing that in cases of emergency the court would dispense with the full term's notice required by the rules of court.<sup>a</sup>

[Master Bunce mentioned an unreported case which occurred in Michaelmas Term, 1844, and in which the facts were these:—The applicant had completed his articles in August 1844, and being about to go abroad, or for some other urgent reason, applied in October to Rolfe, B., at chambers, for leave to give notice for the ensuing Michaelmas Term; no notices had been previously given. That learned judge referred the party to the court, but granted permission to give notice for Michaelmas Term *de bene esse*. The matter was afterwards moved in this court before Patteson, J., and his lordship granted a rule, allowing the notices already given to stand, and authorizing examination and admission in Michaelmas Term.]

Patteson, J., thought that the case mentioned by the Master was a precedent for indulgence in the present instance, and granted a rule, whereby it was ordered, that the said R. C. be at liberty forthwith to give fresh notices, referring to his former notices, and to this rule, of his intention to apply during this present term to be examined and admitted as an attorney of this court; and further, that the examiners, &c. be at liberty to examine the said R. C. during this term, and in the event of the said R. C. passing his examination, that he be admitted an attorney of this court on the last day of this term.

*Ex parte Cunliffe*. Michaelmas Term. Nov. 5, 1845.

LEAVE TO ENTER UP JUDGMENT UPON AN OLD WARRANT OF ATTORNEY.—AFFIDAVIT FOR, BY WHOM IT MAY BE MADE.

*Leave to enter up judgment upon an old warrant of attorney obtained, upon the affidavit of the plaintiffs' assistant who supplied the goods for the price of which the security was given.*

Charnock moved for a rule to enter up judgment on a warrant of attorney, dated Feb. 5, 1842, upon the affidavit of one Bowler, described in the commencement thereof as the "clerk and assistant" to the plaintiffs, and who deposed, that before the execution of the warrant of attorney the defendants were indebted to the plaintiffs in 80*l.*, for goods sold and delivered by deponent, as agent and clerk to the plaintiffs, to the defendants at their request; that being so indebted, the defendants executed the warrant of attorney, and that the defendants had not paid the plaintiffs, deponent, or any other person, but that the same, together with interest thereon, is still due and owing from the defendants to the plaintiffs. No affidavit by the plaintiffs was produced, and the only reason

assigned for the want of it was, that they were in a distant part of the country.

Patteson, J., held, that as the assistant swore positively that the goods were sold by him as assistant, and that the debt was still due and unpaid either to him or the plaintiffs, his affidavit was sufficient, and granted a

Rule absolute.<sup>b</sup>

*Cobbold and another v. Adams and another*. Michaelmas T. Nov. 4, 1845.

ATTACHMENT FOR NON-PERFORMANCE OF UMPIRE'S AWARD.—AFFIDAVIT.

*The affidavit to ground a motion for an attachment for non-performance of an umpire's award should state the disagreement of the original arbitrators.*

ALL matters in difference in this cause had been referred under an order of *nisi prius* to the award of two arbitrators, and if they could not agree, to an umpire named. The arbitrators not having been able to agree, an award was made by the umpire, and

Gray now moved for a rule to show cause why an attachment should not issue for non-payment of the sum awarded, and of the costs due under the Master's allocatur. That the arbitrators had disagreed, and that the umpire had been attended by the parties, were facts recited in the award, but the former fact was not sworn to in the affidavits.

Patteson, J., intimated, that it would be dangerous to go on with the affidavits in their present state, whereupon the learned counsel said that he would come prepared with affidavits swearing to the arbitrators' disagreement on another day.

*Griffiths v. Thomas*. Michaelmas Term. Nov. 5, 1845.

ATTORNEY.—PRIVILEGE FROM ARREST.—ATTENDANCE IN PROCEEDINGS BEFORE COURT.

*H. an attorney, not upon the roll of the Common Pleas, acted as the attorney of one of the parties in a cause in that court; the client obtained an order to change his attorney on the usual undertaking to pay the taxed costs, and H. attended at the master's office for the taxation of those costs, and was arrested for a debt in returning: Held, that having attended at the master's office in obedience to the order of the court, he was privileged from arrest on returning, and that in fact he was not an attorney of the Com-*

<sup>b</sup> The warrant of attorney being only above one and under ten years old. In case of a warrant of attorney above ten years old, a rule *nisi* only can be granted in the first instance. See General Rule, Hil. 2, Will. 4, s. 72.

<sup>a</sup> R. G. Hil. 6, W. 4, and R. (Q. B.) 3 Vict.

*mon Pleas, and therefore not entitled to his costs, made no difference.*

*Willes* moved for a rule to show cause why a judge's order for the discharge of Mr. Hope, an attorney, out of the custody of the sheriff of Middlesex, should not be rescinded. Mr. Hope had been the attorney of the plaintiff in a cause of *Phelps v. Newman*, in the Common Pleas, and an order had been obtained by the plaintiff to change his attorney on an undertaking to pay such costs as should be found due on taxation. An appointment to tax having been made, Mr. Hope attended at the master's office, and on his return was arrested for costs due in an action of *Hope v. Basendale*. Mr. Hope applied to a judge at chambers for his discharge, on the ground that he was privileged from arrest whilst returning from the master's office, and the judge being of that opinion made an order for his discharge. The present rule was applied for, on the ground that Mr. Hope was not an attorney of the Common Pleas, as he had never been admitted or signed the roll of that court, pursuant to the 6 & 7 Vict. c. 73, s. 27, and consequently was not entitled to the costs which he had attended to tax when arrested.

*Carey* showed cause in the first instance. There having been a rule to change the attorney in the action, Mr. Hope was bound to attend the appointment. The order is obtained on behalf of the former client by the new attorney, and it must be assumed that the ordinary practice was pursued here, and attending the appointment consequent on that order he was entitled to his protection, *eundo morando et redeundo*. The question is, whether his attendance was necessary for the transaction of the business of the Court of Common Pleas, and it is submitted that it was. If he had failed to attend that appointment the client could not have proceeded with the action, and the attendance was for his benefit. It is immaterial whether the claim be a legal one or not where a person seeking to enforce it attends in obedience to the order of the court. The question to be considered is, whether a party is *bond fide* engaged in a business pending in the court. He referred to *ex parte King*, 7 Ves. 312.

*Willes*, contra. The proposition on which the argument on the other side is founded, is not sustainable. It is not true that a person not an attorney acting as an attorney is privileged. [*Wightman, J.*—The privilege is for the benefit of the client, not of the attorney.] If the position contended for were allowed, the applicant would be taking advantage of his own wrong. [*Wightman, J.* He was called to attend the master's office for a purpose that interested the client, who could not change his attorney without the taxation of these costs.] If he had not attended they might have proceeded in his absence. [*Wightman, J.* Suppose it had been a summons under the Interpleader Act.] That would be a different case. The interests of legal claimants might be affected. Here Mr. Hope had no interest in law. He brought himself into this position by originally doing

an illegal act. [*Wightman, J.* Suppose he brought an action for these fees, not being an attorney, and attended a summons on some interlocutory matter before plea, would he be privileged then?] He would then be within the rule that parties are privileged. [*Wightman, J.* Though not a party in the action, is he not substantially in the situation of one with respect to his claim for costs? He may be wrong, but he is entitled to be heard. He might contend the statute did not apply to him.] He asks for a privilege as a volunteer. [*Wightman, J.* He does not claim the privilege as an attorney of the Common Pleas, but a person called on by the order of the court to attend.] His attendance was a consequence of his own wrongful act.

*Wightman, J.*—It seems to me that the privilege ought to be allowed to the applicant in this case. It is said his attendance was illegal, but if he attended in obedience to the order of the court, it is immaterial to consider whether or not he was an attorney of the court. If he attended in pursuance of some proceeding taken in the court, whether as plaintiff or in some other character, he was privileged, provided he attended in compliance with some process of the court. He was called upon by the order for referring his bill to taxation to attend, and did so. He might have had some cause to show to the master why he was entitled to these costs, and at all events had a right to be heard upon it, and it is not because the question might be decided against him that he was not bound to attend and privileged in returning.

Rule discharged.

*Re Hope.* Q. B. P. C. T. T., 1845.

## THE EDITOR'S LETTER-BOX.

The 4th part of the *Quarterly Analytical Digest* of all the cases reported in all the courts, will be published in a few days, and will complete the volume for the year. That work will then be incorporated into the *Legal Observer*.

A correspondent at Halifax inquires, whether it is clearly understood in the profession that in a mortgage deed the introduction of a provision, that besides 5l. per cent. interest, the mortgagor shall pay the income tax in respect of the advance, will render the mortgagee subject to the usury laws?

We think that an articulated clerk will not endanger his examination, if during his clerkship he employs himself after office hours in planning and copying drawings, for which he receives remuneration, provided his time be solely devoted to his master's service during the usual office hours, especially as his master is aware of the manner he occupies his leisure hours when not engaged in office business.

The *Legal Almanac and Diary*, with several additions and improvements, will very shortly be published.

# The Legal Observer.

SATURDAY, NOVEMBER 22, 1845.

———"Quod magis ad nos  
Pertinet, et noscire malum est, agitamus."

HORAT.

## LAW OF RAILWAY COMPANIES.

### EQUALITY OF CHARGE AS CARRIERS.

THE multiplication of railway companies, the variety and extent of the interests involved in those undertakings, and the possibility—not to say probability—of their obtaining, at no very distant period, an entire monopoly of the traffic in the carriage both of passengers and goods, renders the construction of the statutes conferring privileges on those great commercial corporations, a matter of universal importance.

It appears from the provisions of the earlier acts incorporating railway companies,<sup>a</sup> that the legislature originally intended that a railway should be in the nature of a public highway, and that all the community should have a right to use it either as carriers or for the purposes of individual travellers, upon payment of tolls to the company who afforded the public an improved line of road. In practice, however, it was found, that the expense of locomotive engines, and the regulations necessary for the effective management of them with safety and convenience, made it impossible for the public to avail themselves of a railway in the same unrestricted manner in which they were accustomed to use a turnpike road. As regards the business of carrying, the nature of the mode of conveyance forbids a free competition of rival carriers, and, in point of fact, the railway companies themselves

have generally—if not universally—conducted the carrying trade on their respective lines.

Two cases have been argued and determined in the courts of law, in reference to the principles upon which railway companies are bound to conduct their trade as carriers, and the result of both those cases is certainly calculated to allay the apprehensions of those who have been accustomed to consider railway companies as "chartered libertines," against whose encroachments private individuals could offer no effectual resistance.

In the latest of those cases, the report of which has only just been published,<sup>b</sup> the learned Chief Justice of the Common Pleas, in pronouncing the judgment of the court, stated clearly and concisely the principles upon which this class of statutes are to be construed, in language so extensively applicable, that it derives little additional weight from the particular circumstances of the case immediately under consideration. "From these several enactments," he says, "it appears clearly to have been the intention of the legislature, that the parties incorporated should be empowered to construct the railway, and hold it as their property, and derive certain profits from it, but that every member of the community should have an equal right to use it on the terms prescribed by the act, and that the payment to be made for such uses, whether under the denomination of rates or tolls, or charges fixed by the company, should be reasonable and equal to all persons, without reference to the particular advantage to be derived by any individual or class of individuals from such uses; and it is to be observed, that the language of these acts of parliament is to be treated as the language of the promoters of

<sup>a</sup> See *The Queen v. The London and South Western Railway Company*, 1 Q. B. 558; and *The Queen v. The Grand Junction Railway Company*, 4 Q. B. 18.

<sup>b</sup> *Parker v. The Great Western Railway Company*, 7 Man. & G. 253.

<sup>c</sup> (i. e.) The several acts incorporating the Great Western Railway Company.

them. They ask the legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Acts passed under such circumstances, should be construed strictly against the parties obtaining them, but liberally in favour of the public."

Before advertng to the application of those principles in the case of *Parker v. The Great Western Railway Company*, it will be convenient to refer to the earlier case of *Pickford v. The Grand Junction Railway Company*,<sup>4</sup> in the Court of Exchequer. In that case, the defendants were authorised by various acts of parliament to carry passengers and goods on their own and other railways, and to make such reasonable charge for such carriage as they should determine upon; and it was enacted, that the charges authorised should be at all times charged equally, and after the same rate in respect of all passengers and goods conveyed by the same carriage or engine, passing on the same portion of the line and under the same circumstances. The company published a list of their charges for the conveyance of merchandize, dividing it into classes, the lowest being 16s. and the highest 60s. per ton. Then followed,—"boxes, bales, hampers, or other packages, when they contain parcels, or other packages, or things under 112 lbs. weight, each directed, consigned, or intended for different persons, or for more than one person, 1d. per lb. weight." The plaintiffs, as carriers, had several parcels delivered to them by different persons, which they caused to be packed in a single hamper, the gross weight of which was 8 cwt. 3 qrs., and delivered the same to the defendants, requiring them to carry the hamper from Birmingham to Manchester, and offering to pay at the rate of 60s. per ton; but the defendants' agent refused to carry the hamper, unless it was opened so that the number of parcels contained in it might be ascertained, or unless the plaintiffs paid for it at the rate of 1d. per lb. on the weight. On this part of the case the court was of opinion, that where small parcels were united and delivered to the company in one package, consigned to one person, the trouble and responsibility were the same as if all the articles contained in the package were the property of the same owner, and intended to be delivered to him; and, therefore, that the defendants had not a right to charge as for separate parcels. There was a second point, arising thus:—The Grand Junction Company were carriers on the London and Birmingham line, and published a scale of charges for the carriage of goods between Manchester and London, stating that Manchester packs were charged 3s. 3d. per cwt. or 65s. per ton, and stating that goods were brought to the station at Camden Town, and no extra charge for portorage or delivery in London. After the publication of this list of charges, the defendants agreed with Messrs. Chaplin and Horne to allow them 10s. per ton out of the entire charge of 65s. per ton, Messrs. C. & H. under-

taking themselves to deliver the goods in London. The plaintiffs tendered a pack to the defendants for carriage from Manchester to London, upon the terms agreed to between the defendants and Messrs. C. & H., but the former refused to accept the pack upon those terms, or to make any allowance to the plaintiffs on the charge of 65s. per ton, intimating that on payment of such charge they would receive the pack and carry it to Camden Town, delivering it there or in any other part of London to which it was consigned. The judgment of the court on this part of the case proceeded on the ground, that it was clearly unreasonable and unequal to charge the same sum to a consignee willing to receive the goods at Camden Town, and to one requiring them to be delivered elsewhere in London, and that the plaintiffs were entitled to deduct a reasonable sum for delivery at London. On both issues, therefore, judgment was entered for the plaintiff.

In the case of *Pickford v. The Grand Junction Railway Company*, the goods proposed to be sent by the railway were not sent, and the action was brought in case, for the refusal to perform a duty which the defendants were bound to perform. But in the case of *Parker v. The Great Western Railway Company* the goods were actually forwarded by the railway on the terms insisted on, and the action was brought to recover back the sum paid by the plaintiffs, and which it was alleged the defendants had improperly received.

The acts under which the Great Western Railway Company is incorporated provide, that the charges for the carriage of goods should be reasonable and equal to all parties, and that no reduction or advance should be made, directly or indirectly, in favour of or against any particular person. In their scale of charges for the carriage of goods for the public generally, the company included the charge of collection, loading, unloading, and delivery of parcels; but in dealing with carriers, who took upon themselves the duty of collecting, loading, unloading, and delivery, the company made a certain allowance or discount equivalent to 10 per cent.; and 5d. and 10d. for the collection and delivery of parcels under the weight of 1 cwt. and 2 cwt. respectively. Another distinction adopted by the company in dealing with the public and with carriers was, that as regarded the public, if there were several packages from one consignor to several consignees, or from several consignors to one consignee, the charge was upon the aggregate weight; whereas in the case of carriers, if there were several packages for several consignees, the charge was upon the separate weight of each packet,—though the company recognised the carrier only as the consignor, the agent of such carrier receiving the goods at the end of such transit. The plaintiffs, who were extensive carriers on the line, claimed the allowance of 10 per cent., and of 5d. and 10d. on parcels under the weight of 1 cwt. or 2 cwt. respectively, as allowed to other carriers, undertaking

<sup>4</sup> 10 Mees. & W. 399.

themselves to perform all the duties for which that allowance was the consideration; but the defendants refused to carry their goods on those terms, assigning for a reason, in one instance, that the plaintiffs had purchased their business from a person who had misconducted himself in his transactions with the company; in another instance, because the plaintiffs had purchased the business from a person who had failed in the company's debt; and in other cases assigning no reason for disallowing the deduction claimed by the plaintiffs. The plaintiffs also claimed to be allowed to send several packages to their own agent, upon payment of the same amount which, under similar circumstances, would be charged to one of the public who was not a carrier; but the company insisted, in such case, upon their right to charge the plaintiffs upon the separate weight of each packet.

The Court of Common Pleas decided against the company upon all the points raised in the case. With regard to the refusal to allow the plaintiffs a deduction of 10 per cent., it was said, that it could not be reasonable to charge the public and a carrier at the same rate, when the latter discharged, at his own expense and for the benefit of the company, certain duties for which an allowance of 10 per cent. was no more than a fair equivalent; and if such allowance were refused to one carrier, although willing to discharge, and in fact discharging, all that other carriers did in respect of the allowance, could it be said that the company did not, directly or indirectly, advance against such carrier their charge for the conveyance of goods? As to the claim of 5*d.* and 10*d.* for the collection and delivery of parcels under 1 cwt. and 2 cwt. respectively, the court was of opinion that *Pickford v. The Grand Junction Railway Company* was an authority directly in favour of the plaintiffs. As to the plaintiffs' claim to be dealt with as one of the public, where they consigned several packages by the same train to their own agent, the court thought the company were bound to treat the plaintiffs as consignors and consignees for all purposes, including the mode of charging on the aggregate weight, and that the company had no right to make a distinction in that respect between the plaintiffs and any other persons.

In the course of the argument in *Parker v. The Great Western Railway Company*, it was strongly urged upon the court, that even if the charges were improperly made by the company, the plaintiffs had misconceived their remedy, and that as they had voluntarily made those payments as the consideration for the carriage of their goods, they could not now recover back the monies paid in pursuance of this contract. In reference to this argument, the court determined, that the payments were not voluntary: they were payments made to induce the company to do what the company were bound to do without such payments. The monies, it was said, were paid through the necessity and urgency of the case, and were therefore recoverable in this form of action,

upon the principle acted upon in — *v. Pigott*, as referred to by Lord *Kenyon*.\* Upon these grounds, judgment was given for the plaintiffs on the whole case.

## COMMONS INCLOSURE ACT.

8 & 9 VICT. c. 118.

(Concluded from p. 44, *ante*.)

WE now conclude our abstract of this statute, — giving such of the clauses fully as appear to be important.

No question of *title* is to be decided by the commissioners or other persons acting under the powers of the act. Thus, it is enacted,—

49. That nothing in this act contained shall extend to enable the valuer, or the commissioners, or any assistant commissioner, to determine the title of any lands, or to determine any right between any parties contrary to the actual possession of any such party, (except in cases of encroachment as hereinafter mentioned), but in case the valuer, or the commissioners or assistant commissioners, shall be of opinion against the rights of the party in possession, they or he shall forbear to make any declaration thereupon until the possession shall have been given up by such party, or recovered from him in due course of law, or, where the circumstances shall admit, such valuer, or the commissioners or assistant commissioner, may declare what right is appended or appurtenant to any land or hereditament, or otherwise declare by any sufficient description the rights of the owner for the time being of any land or hereditament, without declaring by name who may be the actual owner of such land or hereditament.

The following are the provisions with regard to *encroachments*.

50. That all encroachments and inclosures, other than inclosures duly authorised by the custom of any manor of which such land shall be parcel, or otherwise according to law, which shall have been made by any person, from or upon any part of the land proposed to be inclosed, within twenty years next before the first meeting for the examination of claims in the matter of the inclosure thereof, whether any amercement, rent, or money payment or acknowledgment shall or shall not have been paid or made in respect of the same, to or for the use of the lord of the soil or any other person, shall be deemed parcel of the land subject to be inclosed, and shall be divided, allotted, and inclosed accordingly: Provided always, that in case, under the circumstances of any such encroachments or inclosures, it shall appear to the

\* In *Cartwright v. Rowley*, 2 Esp. N. P. C. 723.



commissioners just or reasonable that rights or interests in the lands to be inclosed should be allowed to the persons in possession of such encroachments or inclosures, it shall be lawful for the commissioners, either in the instructions to the valuer, or by any subsequent order under their seal, to direct what rights and interests, either absolute or for any limited terms or estates, should be allowed in respect of such encroachments, and the valuer shall allow and declare such rights accordingly: Provided also, that it shall be lawful for the several persons who shall be in possession of any such encroachments or inclosures, or in the receipt of the rent thereof, at the time of the determination of claims under this act, to take down or remove all such buildings, fences, and other erections as shall then be thereon, and to convert the materials thereof to their own use, within two calendar months after notice in writing signed by the valuer given to such respective persons, or posted on the church door; and in case any dispute or difference shall arise touching any such encroachments or inclosures, or as to the extent thereof, such dispute or difference shall be determined by the valuer.

51. School-houses, &c. not to be deemed encroachments.

52. Encroachments of twenty years standing to be deemed ancient inclosures.

53. Rights in respect of tofts to be allowed.

54. Rights not sustainable in law to be allowed upon proof of sixty years usage.

55. Schedule of claims allowed by valuer to be made and deposited for inspection. Claims may be reheard by commissioners or an assistant commissioner.

An appeal against the determination of the commissioners, is then provided for as follows:—

56. That if any person claiming to be interested in any land proposed to be inclosed under this act shall be dissatisfied with any determination of the commissioners or assistant commissioner concerning any claim or interest in or to the land proposed to be inclosed under the powers hereinbefore contained, and shall cause notice in writing of such dissatisfaction to be delivered to the commissioners within thirty days next after notice of such determination shall have been given to the several parties or persons specially interested, if any such there be, it shall be lawful for such person so dissatisfied, and giving such notice as aforesaid, to bring an action upon a feigned issue against the person in whose favour such determination shall have been made, or against the commissioners, and to proceed to a trial at law at the then next assizes, or at the assize immediately following such next assizes, to be holden for the county wherein the land relating to which such dispute shall arise shall be situate; and the defendant in such action shall, upon being served with the usual process therein, appear thereto, and accept one or more issue or issues, whereby such claim, and the right and interest thereby

insisted upon, may be tried and determined, such issue to be settled by the proper officer of the court in which the said action shall be commenced, in case the parties shall differ about the same; and the verdict given upon the trial of such action shall be binding and conclusive upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict, and order a new trial to be had; and after such verdict shall be given, and final judgment obtained thereon, the commissioners shall act in conformity thereto, and allow or disallow the claim thereby determined according to the event of such trial; and the costs attending any such action shall abide the event of the trial.

57. Determination of commissioners not appealed against conclusive.

58. Actions not to abate by death of party.

59. Commissioners may award costs.

60. Differences may be submitted to arbitration.

The following are the remaining clauses in the act, which it will be sufficient to mention briefly:—

61. Power to valuer to make watercourses, &c.

62. Power to alter roads and ways.

63. Appeal to quarter sessions may be made against such alteration of roads, &c.

64. Trial of appeal.

65. Roads to be fenced. 5 & 6 W. 4, c. 50.

66. Expenses of making and altering roads.

67. Roads to be repaired by the parish after certificate by two justices of the peace.

68. Private roads.

69. Rights of commons may be suspended.

70. Course of husbandary may be directed.

71. Compensation for growing crops.

72. Allotment for repair of roads.

73. Allotments for public purposes.

74. Provision for awarding allotments for exercise to individuals, subject to the obligation of permitting it to be used.

75. Allotments for the labouring poor may be made subject to a corn rent-charge, to vary and be recoverable as a tithe rent-charge. 6 & 7 W. 4, c. 71.

76. Allotment to the lord of the manor.

77. Allotment of residue.

78. The rent-charges payable out of allotments for the labouring poor to be allotted to persons entitled under the inclosure.

79. Separate allotments to be made in respect of separate titles.

80. Several allotments may by consent be laid together.

81. Cultivated lands and buildings to be allotted to the proprietor.

82. Regard to be had to the situation of homesteads.

83. Allotments to be fenced.

84. If interest in land is sold before allotment is made, the valuer to make the allotment to the purchaser.

85. Allotments to be made to representatives of parties dying.

86. Old inclosures may be allotted, with consent.

87. Allotments to freemen and other classes of persons entitled to common rights to be made to trustees.

88. Power to sell such allotments. Application of purchase money.

89. Meeting of persons so entitled for giving instructions to valuer.

90. Partitions may be made.

91. Costs of partition.

92. Exchanges.

93. Wills and settlements not to be affected.

94. Tenure of the allotments.

95. Leases at rack rent may be voided.

96. Seigniories not affected, except with consent.

97. Minerals under regulated pastures may be reserved, while minerals under land to be held in severalty are relinquished.

98. Right to minerals under land inclosed, existing distinct from the property in the surface, and not compensated upon inclosure, not to be affected.

99. Trees to be allotted with the land.

100. Cattle not to be depastured on roads.

101. Alteration may be made in allotments.

102. Valuer to draw up a report and annex thereto a map of the claims.

103. Report to be deposited for inspection.

104. Award to be drawn up by the valuer, and confirmed by the commissioners.

105. Confirmation of award to be conclusive evidence that the directions of this act have been obeyed.

106. Allotments to be in compensation of previous rights.

107. Allotments may be subdivided by supplemental order.

108. Allotment for the labouring poor shall be managed by the allotment wardens.

109. Such allotments how to be left.

110. Recovery of gardens on nonpayment of rent, &c.

111. Possession, how to be recovered from tenant holding over. 1 & 2 Vict. c. 74.

112. Rents of allotment how to be applied.

113. Regulated pastures may be set out.

114. Conversion into regulated pasture to be deemed an inclosure.

115. Rule of rating to be established.

116. Property of soil of regulated pastures.

117. Election of field reeves.

118. Duties of field reeves.

119. Provision for rateable increase or diminution of rights.

120. Expenses to be raised by rate.

121. Power to apply the act to pastures already stinted.

122. Expenses of application of act to pastures already stinted.

123. Power to enter lands for surveys, &c.

124. Expenses of inclosures.

125. Estimates of expenses to be approved of at public meeting.

126. Remedies in case of nonpayment of expenses.

127. Power to make additional rate.

128. Commissioners may remove valuers.

129. Valuer not to purchase lands in the parish for seven years after the award.

130. Repayment to Consolidated Fund.

131. Persons attending meetings to pay their own expenses.

132. Expenses of witnesses.

133. Power to mortgage allotments.

134. Power to sell parts of allotments.

135. Sales of parts of allotments how to be made.

136. Commissioners to receive and apply purchase money.

137. Application of compensation money of parties under disabilities.

138. Investment of surplus, when 200*l.* or upwards, in Bank of England. 12 G. 1, c. 32. 12 G. 2, c. 24.

139. Payment of dividends in the mean time.

140. Application of money under 200*l.*

141. Under 20*l.* to be paid to the parties for the time being entitled to the rents.

142. Sale of land by valuer for expenses.

143. Conveyances to be made by commissioners.

144. Application of purchase monies.

145. Notice to be given to reversionsers.

146. Copies of award to be made and deposited.

147. Exchanges may be made of land not subject to be inclosed.

148. Division of intermixed lands.

149. Inconvenient allotments for the poor and public purposes may be exchanged for land more convenient.

150. Notices of such exchanges and divisions to be given.

151. Expenses of exchanges and divisions.

152. Commissioners may remedy defects and omissions of awards under local acts of inclosure, or under 6 & 7 W. 4, c. 115.

153. Commissioners may revive powers under local inclosure acts lost by lapse of time, or otherwise.

154. Commissioners may appoint persons to complete proceedings in an imperfect inclosure.

155. Commissioners to give notice before proceeding to amend awards under local act.

156. Proviso for cases where dealings have been had with land on faith of inaccuracies, &c. proposed to be rectified.

157. Commissioners may confirm awards or agreements made under supposed authority of 6 & 7 W. 4, c. 115.

158. Power to reduce the number of trustees under local act where a sufficient number of persons qualified cannot be found.

159. Penalties and forfeitures how recoverable.

160. Distress, how to be made.

161. Distress not unlawful for informality.

162. Notices, how to be given.

163. Advertisements, awards, &c., free of duty.
164. Persons giving false evidence, &c., to be guilty of a misdemeanor.
165. Limitation of actions.
166. Proceedings not to be removed by certiorari.
167. Interpretation clause.
168. Act to extend only to England and Wales.
169. Alteration of act.

## ORIGIN & PROGRESS OF EQUITY JURISDICTION.

To a foreigner it must indeed appear a singular anomaly in our institutions, that the same title which would enable a suitor to obtain a judgment in his favour at law, will very often ensure a decree against him in equity. Even a native Englishman may well be startled with a proposition apparently so paradoxical. The two opposite sides of Westminster Hall exercise their respective jurisdictions in a manner so widely different, that their existence at the same time, under the same government, is a thing in itself so astonishing, as only to be exceeded by another wonder, which is the fact, that they both, in their several ways, mutually and admirably contribute to the correct administration of justice.

Equity is a suppletory excrescence, owing its birth to the defects of the law. It was first dispensed by the Sovereign himself, in his great council of the realm, the High Court of Parliament; — for it is a point beyond the reach of all controversy and disputation, that prior to the reign of Edward I., the *Aula Regia*, as the ultimate superintending and corrective jurisdiction of the state, exercised an authority at once civil and criminal, legal and equitable, original and appellate,—great part of which, however, it surrendered on the establishment of the Courts of King's Bench, Common Pleas, and Exchequer. To those tribunals the Court of Parliament gave up, in the first place, all original civil jurisdiction at the common law; and, secondly, all original criminal jurisdiction, except where peers were concerned. Thus there still remained with it the jurisdiction of trying peers, which it still retains as an inherent inalienable attribute of its character; 2ndly, The ultimate appellate jurisdiction in matters both civil and criminal—furnishing its chief judicial occupation in the present day; and, 3rdly, The equitable or prætorian jurisdiction — the

*officium nobile* — which, however, it gradually abandoned in the way we are now to explain.

The relinquishment of its equitable jurisdiction was effected by a process of delegation similar to that which had operated with respect to the other branches of authority to which we have adverted. The *Concilium Regis in Cancellaria*, in other words, the Court of Chancery, composed of the Chancellor and of certain members of the Privy Council, who were also assistants in parliament, dispensed equity, under the authority and by the express direction of the Court of Parliament, throughout the reigns of the first three Edwards.

About the close of the long reign of Edward III., the Court of Chancery began to exercise equitable functions *ex proprio vigore*, that is to say, independently of parliament; for it was then that Bishop Waltham, (holding at that period an inferior office in the Chancery,\*) invented the well known writ of subpœna against defendants in equity. This famous prelate, the parent of what is called the *extraordinary* jurisdiction of the Court of Chancery, was, in the time of Richard II., advanced to the office of Master of the Rolls; but he was never Chancellor, as Blackstone and other writers represent him to have been. His contrivance whereby defendants were compelled, in violation of the first principles of the common law, to answer and submit to a searching examination upon oath,—procured for him no little odium in his life, and execration after, as appears by many entries in the rolls of parliament condemnatory of the *crafty* and *cunning invention* of Bishop Waltham.

The Court of Parliament, nevertheless, still continued to interpose as a court of equity from time to time, and this more especially when members of its own body, the peerage, were concerned.

Accordingly, we find that in the 9 Henry 5, the Court of Parliament, in the clearest

\* In those days the Chancery was not usually denominated a *court*; it was a public office, established coevally with the monarchy, but originally not a court of justice. It was in fact an office of the Court of Parliament. Hence, in the new houses of parliament now in course of being erected, there is accommodation provided for the *Chancery*. Accordingly, the office of the Clerk of the Crown in Chancery, so long held in the Rolls Yard, will soon be removed to Westminster.

exercise of equitable jurisdiction, compelled a feoffee to uses to reconvey the estates of William Lord Clynton, the feoffor.

At what period equitable jurisdiction was finally surrendered by the Court of Parliament, and exclusively vested in the Courts of Chancery and Exchequer, it is, we think, impossible now to ascertain.

However, enough has been said to show, in a general way, the origin of equity as understood in courts of justice. The common theory, that it commenced with John Waltham, is erroneous. He merely devised a writ which enabled the Chancery to work by its own authority, without the aid of any reference or devolution from the Court of Parliament.

[We hope to continue this subject in an early number.]

## NOTICES OF NEW BOOKS.

*The Practice of the High Court of Chancery, including Appeals to Parliament, and Proceedings in Lunacy; with Official Forms, Pleadings, Costs, &c. &c.* By HARDING GRANT, a Solicitor of the Court. Fifth edition, revised and enlarged; and incorporating all the existing general orders of Court to the 8th May, 1845. 2 Vols. London: Maxwell & Son, &c., 1845. Pp. 683, 525.

It may in one view be fortunate for the practitioners in Chancery, that, along with the numerous and important changes that are constantly in progress, new books of practice and editions of new orders are rapidly published. On the other hand, in the midst of many counsellors it is difficult to say which is the best guide into these unknown regions. One is excellent in some respects and another in others. It is not for us to declare which of the several candidates for professional favour is the best entitled to obtain it. Mr. Daniel, of counsel learned in the law, with his experience at the bar, has produced a work of great excellence. Mr. Sidney Smith, one of the late clerks in court, versed in all the technicalities of his office, and aided by his practical colleagues, is eminently qualified for the office of "instructor clericalis." And now comes Mr. Harding Grant, a solicitor of the court, with a 5th edition of his Practice, whose work as the latest on the subject, we consider ourselves bound to notice.

Amidst rival claims to professional sup-

port, we have usually stated the arguments of each author in behalf of his own pretensions, and this method we shall pursue on the present occasion. Mr. Grant describes as well the plan of his work, as the reasons for adopting it, and we shall, we trust, render him justice by extracting fully the statement contained in his preface.

"On this occasion, (he says), the author still deems it right to repeat that his undertaking has ever been and is especially addressed to the least, or not sufficiently, acquainted with Chancery Practice, conceiving that the *experienced* practitioner needs no such assistant or remembrancer. This is his explanation of the minuteness, and possibly the *imagined* triviality of some parts; yet neither uncalled-for minuteness nor triviality can (he thinks) be predicable of aught that is *useful* to those who have *need* of minuteness or detail.

"The *plan* he has ultimately adopted is what, after much deliberation, he considers the best adapted for perspicuity and ready apprehension, and safe guidance. It is intended to meet, hypothetically, as nearly as possible, the various and uncertain incidents of suits. This will be seen in Chapter I., particularly. Entire impeccability on such subjects can, he supposes, only be expected (if at all) from hands not likely to be found engaging in a work of the present kind. But he rests in the belief that, whatever may be his errors or defects, he has laboured, not quite unsuccessfully and in vain, in enabling the least previously informed person, with reasonable attention and perception, to confer with or consult counsel or officials respectably and satisfactorily.

"He has gone some little way (he submits it can hardly be said to be *out* of his way) into the ample, if not boundless, field or wilderness of cases and authorities; not from a conceit of great ability so to do, nor from any propensity to display, but from a wish to introduce to and familiarise beginners with those matters, although to an extent so limited. They may *pursue* them from their *appropriate* sources to any extent they please.

"The *Common Law side* of Chancery, following out the plan of the late Mr. Harrison, and of Mr. Maddock, he has thought best adapted for the use of solicitors and of junior practitioners. In this edition it will be found in the regular *Equity Practice*, Chapter 72.

"The *Costs*, as well as the other subjects, he has endeavoured to construct with as much regard as may be to the Orders of 8th May, 1845. Still some allowance must be made for the yet *untried* conformity of some matters to those orders, and the unknown constructions which may be given of some of them. In many cases (instance that of *Pro Confesso*, for one) he conceives the last orders to be *not imperative*, generally, if at all, but *optional*, either wholly or in part, or perhaps intended to act, where practicable, *concurrently* with the existing practice. As to *costs*, however, they certainly are

never to be blindly or primarily followed or resorted to as teaching *practice*, but only to be selected as wanted, being chiefly a mere modified repetition of a round of *charges*; and, if the *business* be *rightly done*, the charges follow. Nevertheless, the Bills of Costs, in addition to the schedules of Chapter 69, and the observations of Chapter 68, show the general structure and mode of making out Bills of Costs.

"The Second Volume contains precedents and documents which, although ample perhaps in number, and generally of older date than the present practice of the court, he thinks far from undesirable, being by no means destitute of useful practical information; for although the drawing up of decrees and orders is now much less verbose and lengthy than before, yet the *old manner* affords a view of the *grounds* and *reasons* of those decrees and orders, which grounds and reasons are in the present brevity lost sight of, though to a *student*, perhaps, neither uninteresting nor unserviceable. Special *petitions*, however, *cannot* be so curtailed, since the court must necessarily be furnished with all needful information for the petitioners obtaining a compliance with their prayer. As to the forms of affidavits, and notices of motion, and the like, although they may be found what are generally speaking required, yet by no means so as to dispense with consideration, and judgment and accommodation to the infinite shades of difference which occur in the circumstances of actual business.

"In these his endeavours at utility, he begs to acknowledge having derived accommodation and some essential service from Mr. Sanders's deeply researched collection of Chancery Orders, a desideratum to *Equity* practitioners, and of which, it appears to him, that the Orders of 8th May, 1845, in point of still farther simplifying and facilitating in no inconsiderable measure the practice of the court, form a material portion."

As an example of the work, we shall extract the *Observations* of Mr. Grant on *Charges in Bills of Costs and their Taxation*.

"1. By the Orders 120—125 of 8th May, 1845, it is directed (Order 120) that 'where costs are to be taxed as between party and party, the taxing master may allow to the party entitled to receive such costs all such just and reasonable expenses as appear to have been properly incurred in

The service and execution of writs, and the service of orders, notices, petitions, and warrants,

Advising with counsel on the pleadings, evidence, and other proceedings in the cause,

Procuring counsel to settle and sign pleadings and such petitions as may appear to have been proper to be settled by counsel,

Procuring consultations of counsel,

Procuring the attendance of counsel in the master's offices upon questions relating to pleadings or title,

Procuring evidence by deposition or affidavit, and the attendance of witnesses, and,

Supplying counsel with copies of or extracts from necessary documents.'

'But in allowing such costs the taxing master is not to allow to such party any costs which do not appear to have been necessary or proper for the attainment of justice, or for defending his rights, or which appear to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party. And (Order 121) the costs of such copies of pleadings and proceedings as have heretofore been allowed in the taxation of costs between party and party in country causes are hereafter to be allowed in the taxation of costs between party and party in town causes. By the 122nd Order, if, upon the hearing of any cause, petition, or motion, the court is of opinion that any pleading, petition, or affidavit, which has not been referred for impertinence, or any part of any such pleading, petition, or affidavit, is improper or of unnecessary length, the court may either declare such pleading, petition, or affidavit, or any part thereof, to be improper or of unnecessary length, or may direct the taxing master to look into such pleading, petition, or affidavit, and distinguish what parts or part thereof are or is improper or of unnecessary length, and may direct the taxing master to ascertain the costs occasioned to any party by such parts or part thereof as in the one case may have been declared to be, and in the other case may have been distinguished as being, improper or of unnecessary length, and may make such order as is just for the payment, set-off, or other allowance of such costs.' And, by the 123rd Order, upon interlocutory applications, where the court deems it proper to award costs to either party, the court may by the order direct payment of a sum in gross, in lieu of taxed costs, and direct by and to whom such sum in gross is to be paid. And, by Order 124, in cases where a bill or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order ordered or decreed to be paid, the taxing master may tax such costs without any order referring the same for taxation, unless the court, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs; and the costs to be certified by the taxing master are to be recovered by subpoena. By the 125th Order, the costs of a bill of delivery, filed by any defendant to a bill for relief, are to be costs in the original cause, unless the court otherwise orders.'

"2. To the examples of bills of costs in Ch. 71, some remarks on charges and taxation, in reference to their allowance or disallowance, (but having regard to the foregoing Orders), are here premised as conducive to the solicitor's avoiding, if he deem it an object, his liability to pay the costs of taxation, in case of a sixth of the amount of his bill being struck out, viz.:

"3. As to *affidavits*. Instructions for drawing special affidavits are not allowed between

\* See two cases on this order at pp. 76, 77. *post.*—Ed.

party and party, if made by the solicitor or clerk alone, (unaccompanied by other deponents,) unless founded on inquiries or calculations made, or other business done by them; and in other cases, only one fee of 6s. 8d. allowed for instructions, however many the deponents; nor more than one such charge for attendances on any number of deponents to read over the affidavit, or for getting it sworn; and whatever the charge paid may be for filing and for office copy of affidavit of service, the same is allowed for drawing and engrossing it; and, as between party and party, payments to deponents are not allowed for their trouble, loss of time, or expenses, deponents being considered as volunteers.

"4. As to *attendances*. That charge (attendance), either to search for or file bill, or to search how the cause stands, or to bespeak copies of minutes, or order, or decree, or pleadings, or proceedings in the master's office, or any other matters of the like nature whereupon nothing ensues, should never be inserted.

"5. As to *abbreviating pleadings*. Where a bill does not pray relief, this charge is not allowed; if it prays relief only, and not an injunction, then allowed after replication filed; if relief and an injunction, then both bill and answer may be abbreviated as soon as filed; and if a bill be set down on bill and answer, abbreviating is not allowed until after the cause is set down, and subpoenas to hear judgment served; but if, for convenience, the pleadings are abbreviated at an irregularly early period, they may perhaps be allowed then, instead of afterwards. On a motion for, or to dissolve, an injunction, where a party is to have his costs of motion, abbreviating is not allowed, though the brief copies of the pleadings usually are; abbreviating affidavits is not allowed between party and party, but copies at 4d. per folio; in depositions the whole length of the office copy, including the interrogatories, if any, is allowed.

"6. As to *advertisements*. When for creditors, only one attendance for inserting all the advertisements is generally allowed; and for each copy of the advertisement 1s.

"7. As to *defendant's accounts*. No copies of these will be allowed on taxation, nor any perusal to examine their accuracy; nor any attendance upon parties with that view, however frequently and necessarily had; but the solicitor may, if he pleases, insert such items in his bill (best in blank as to the charge) to show his trouble in the suit; copies for the country allowed.

"8. As to *mortgagees' costs at law*. The master will not allow them if they appear excessive, without being first taxed by the officer of the court wherein the proceedings were had.

"9. As to *writing letters*. Very seldom in taxation more than 3s. 6d. allowed, and the occasion for writing them at all narrowly inquired into, whether between party and party, or solicitor and client.

"10. As to *amendment of bills*. Costs of amendment before answer are generally not allowed between party and party, nor between

solicitor and client, unless the amendments could not have been comprised in the original bill; the 1l. costs of amendment to each set of defendants from whom a further answer is required, or when there is a new engrossment, though no further answer required, is not allowed between party and party; the excess of an amended, beyond the quantity of an original bill, is allowed.

"11. As to *answer without oath*. The order is not allowed in strict costs, unless expense is saved by it, except as against the party applying for the accommodation.

"12. As to *briefs*. The taxing masters, on taxation, require a brief sheet, for which the allowed charge is 3s. 4d., to consist of about ten chancery folios, of ninety words each, except in those sheets which have the title of the cause and the prayer of the bill, both of which being written within a half margin, the sheet cannot contain so much. For drawing observations to briefs, 6s. 8d. per sheet, and 3s. 4d. for fair copy. More than three sheets of observations are rarely allowed. Several more copies of briefs, &c. are sometimes made than allowed. In strict taxation, a brief sheet should contain forty-two lines. In drawing a brief wherein copies of deeds, wills, &c. are introduced, the quantity contained in such documents should be disallowed; neither in copies of briefs should schedules to answers be allowed, unless necessary for counsel's information, extracts, when needed, being considered sufficient; nor should the interrogating part of bills be allowed.

"13. As to *drawing*. For a pleading less than seven folios, 6s. 8d. is allowed; for states of facts, proposals, and pedigrees, besides the documents mentioned in schedule of fees, (Ch. 69,) 8d. per folio.

"14. As to *copies of minutes*. When half the sum paid for the minutes makes even money, that half is allowed for the copy; otherwise, the sum allowed is made up to even money.

"15. As to *counsel's fees*. Between party and party, one guinea up to twenty-nine folios; if thirty folios, two guineas; if sixty folios, three guineas, and an additional guinea for every thirty folios; and only 2s. 6d. for the clerk. But a larger fee is allowed with reference to the amount of the counsel's fee—perhaps beyond a five guinea fee, about 5s. in every ten guineas; and after fifty guineas, at the master's discretion.

"16. No allowance of fees for counsel's settling schedules, which must be also deducted from the length of an answer, though there may have been much trouble in rendering them fit for the purpose; neither in strict costs will exhibits or documents accompanying the briefs be considered in settling the amount of fees to counsel.

"17. As to *engrossing*. Bills, answers, examinations, interrogatories, (on parchment,) 6d. per folio.

"18. As to *parchment*. Between party and party 5s. is allowed for each skin, each to contain fifty folios.

"19. As to *appeals*. These costs not being costs of suit, they are not allowed unless provided for specially in the order; but a notice of motion in any proceeding pending an appeal being a regular proceeding in the suit, the allowance of the costs depends upon success or failure.

"20. As to *consultations*. They are not allowed between party and party.

"21. As to *close copies*. A close copy of answer is allowed to plaintiff between solicitor and client, both in town and in country causes.

"22. As to *interrogatories*. The charge of 13s. 4d. covers, as between party and party, all the trouble of finding out and getting up the evidence.

"23. As to *injunctions*. Two counsel are allowed on the motion for the writ, unless when *ex parte*.

"24. As to *instructions*. They are not allowed for exceptions, abstracts of title, charges or discharges, states of facts, proposals, bills of costs, receivers' accounts; and instructions for the bill is always the first item allowed in a bill of costs, either as between solicitor and client or party and party, unless previous business had been provided for by the order.

"25. As to *taking copies of costs*. This right is regulated by the interests of the parties in the fund; executors and trustees are not entitled to attend the taxation of costs when all parties interested are before the court; executors are entitled to attend until the fund is ascertained to be free from debts.

"26. As to *payment of money into court*. Copies of the pleadings to support the motion are not allowed, unless it be shown that extracts from the answer would not have been sufficient.

"27. As to *enlarging publication before decree*. The attendance to obtain consent is, between party and party, only allowed against parties who avail themselves of the enlargement for the examination of their own witnesses.

"28. As to *process*. Costs are not allowed between party and party for attachment on any contempt except where the bill is taken *pro confesso*; nor are attendances allowed for offering acceptance of service, if shown that regular service would have been less expensive.

"29. As to *sale in the master's office*. The items will be taxed as if costs, charges, and expenses of the sale were given by the decree. With respect to this head, see further in the table of masters' fees, schedule 3.

"As to *subpœna to appear and answer*. 5s. 6d. is paid for the writ, and 4d. charged by the solicitor for the copy; and for service in town, 2s. 6d.; and 5s. for service in the country; but on this see pl. 1, ante.

"31. As to *subpœna to hear judgment, and answer an amended bill*. For the first, 2s. 6d. is allowed for service on each solicitor, and if he is concerned for different solicitors, 2s. 6d. for each; if a solicitor is concerned for more than three defendants, then 2s. 6d. for three or under, 5s. for four to six, and so on the same proportion; and a copy of the subpœna to be served for every defendant, husband and wife as one; and as to *amended bills*, 2s. 6d. is al-

lowed for service on the solicitor for each set of defendants; if one set exceed three in number, 2s. 6d. more; if exceeding six, 5s. more, and so on.

"32. As to *reports*. Close copy allowed between party and party, whether in a town or country cause.

"33. As to *refreshers*. Disallowed, unless the briefs have been delivered as near as possible to the cause being ripe for hearing, viz. within twelve of the day's paper; if the cause is within that number at any period of the term wherein the briefs were delivered, a refresher for the next term will be allowed if the cause be in the paper during that term; the vacation forms part of the term preceding it; not allowed on petitions or motions, or on appeals from an order made thereon, nor on exceptions to report on interlocutory matters.

"34. As to *varying minutes on motion*. The allowance of the costs depends on the result of the motion, and upon the question whether the matter should not have been provided for on the hearing.

"35. As to *term fees, &c.* They are allowed in preference to interlocutory motions, &c., when any steps have been taken advancing the cause in its progress, so that a party having to pay for a motion will not be charged with the fee on that account, if he can show that any step in the cause, advancing it, has been taken during the term; nothing is allowed as between party and party for any carriage, postage, or portage, of whatever kind, beyond the 5s. for letters and messengers; but other or extra charges of the kind so excluded, double and foreign postage, &c., are, when properly incurred, allowed as between solicitor and client, except portages and booking, though, strictly, the solicitor may be required to elect between them and the 5s. per term.

"36. As to *warrants*. For service on each solicitor, 2s. 6d.; personal, 10s.: the number of warrants usually allowed are four to about one hundred folios.

"37. As to *exceptions*. If the master's certificate, made on exceptions pursuant to Order 19, 1833, is silent respecting costs, a plaintiff succeeding on any exception is allowed his taxed costs of the exceptions as between party and party on the taxation of the general costs in the cause, under Order 28, 1828, giving credit for any sum received of the defendant. But a strong case must be made out for the party failing to warrant the allowance to him of the costs of exceptions, on a taxation between solicitor and client out of a general fund.<sup>b</sup> But the Orders of 8th May, 1845, noticed in Ch. 51, pl. 15—31, and Ch. 56, pl. 16, &c., are to be attended to.

"38. There may also be much business and trouble in many cases, which cannot be charged with any prospect of being allowed on taxation between party and party, but which is often paid for by the client as extra costs. Sometimes either the whole, or a portion of a payment out of purse, may be allowed, although nothing for the business done, or less for it than charged."

<sup>b</sup> 2 Smith, 290.

## APPLICATIONS TO BE ADMITTED AS ATTORNEYS.

*Hilary Term, 1846.*[Concluded from page 55, *ante.*]*Queen's Bench.**Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Keyes, Robert James, 102, Gt. Russell Street; Beresford Street, Rochford . . . . .	George Wood, Rochford. Thomas Wood, Corbet Court.
Karslake, Preston, 6, Queen's Sq., Bloomsbury . . . . .	William B. Crealock, Regent Street.
Knight, William, Tamworth; and Glascote House, near Tamworth . . . . .	Henry James Damant, Tamworth.
Knapp, John, 31, Charles Street, City Road; and Worcester . . . . .	Charles Pidcock, Worcester.
King, William Dinham, Camelford; and St. Austell . . . . .	William Shilson, St. Austell.
Low, Edwin, 16, St. George's Square, Portsea; and Chancery Lane . . . . .	Archibald Low, Portsea.
Lawrance, Henry, Ipswich . . . . .	Eleazar Lawrance, Ipswich.
Little, Edward Carruthers, 11, Egremont Pl.; and Pitchcombe . . . . .	George Edwards, Stroud.
Lloyd, Edmund, 28, Devonshire Street, Queen's Square; Argyle Street; and Alfred Street . . . . .	Joseph William Thrupp, Oxford Street.
Maberley, Thomas Henry, Colchester; and Albert Square . . . . .	Thomas Maberley, Colchester.
Mellor, William Jones, St. Ives . . . . .	Benjamin Aislabie Greene, St. Ives.
Mason, Augustus, 2, Endsleigh Street, Tavistock Square . . . . .	Francis Ommanney, Basinghall Street.
Moule, Frederick George, Melksham; and Church Row, Stoke Newington . . . . .	Francis Edwards, Delahay Street.
Mason, Henry, 73, George Street, Portman Square; and Cuckney, near Mansfield . . . . .	Frederick Moule, Melksham.
Macnamara, James Robert Shakespere, The Grange, Fulham . . . . .	Arthur Gore, Melksham.
Miller, Henry Blake, Norwich . . . . .	George Herbert Kinderley, Lincoln's Inn.
Merryweather, John, Salisbury; Queen's Square . . . . .	William Henry Barber, New Bridge Street.
Miles, Thomas, jun., Leicester . . . . .	Charles F. Tagart, Raymond Buildings.
Michael, James Lionel, 9, Red Lion Square . . . . .	Henry Miller, Norwich.
Maugham, Robert Ormond, Chancery Lane . . . . .	George Dew, Salisbury.
Murdoch, John, 53, Southampton Street, Pentonville; and Winchester Street . . . . .	Matt. Thos. Hodding, Salisbury.
Minter, John Marsh, 7, Trafalgar Place, West Hackney Road . . . . .	Samuel Miles, Leicester, (deceased).
Nettleship, William, 24, Liverpool Street, New Road; and Higham . . . . .	Roger Miles, Leicester.
Nicholson, Henry, 13, Lloyd Square, Pentonville . . . . .	Jacob Michael, Red Lion Square.
Newington, Alex. Thurlow, 8, Duke Street, St. James's; and Hawkhurst . . . . .	Adam Yates Bird, Kidderminster.
Oldacres, Robert J. Francis, 7, Arthur Street, Gray's Inn Road; Leicester; and New Buckingham Street, Dover Road . . . . .	Robert Maugham, Chancery Lane.
Pope, John, 2, New Millman Street . . . . .	Thomas Randall, Castle Street.
Philcox, James, jun., 85, High Holborn; Burwash; and Lincoln's Inn Fields . . . . .	Frederick Smith, Basinghall Street.
Podmore, William Handsley, Birmingham; and Sparkbrook . . . . .	D. Calver, Kenninghall.
Petherick, John William, Mount Radford, Devon . . . . .	Henry Robert Burfoot, King's Bench Walk.
	Richard Raven, King's Bench Walk.
	William Pain Beecham, Hawkhurst.
	William Palmer, Leicester.
	William Rodham, Wellington.
	James Philcox and John Baldock, Burwash.
	Jesse Bartleet, Birmingham.
	Edwin Force, Exeter.



- Poulton, Henry, 8, Lloyd Street, Pentonville; Amwell Street; and Gt. Percy Street . . . Henry Darvill, New Windsor.
- Parker, Robert John, Adelphi Cham.; Selby; Sidmouth Street; Beaufort Buildings; Frederick Street . . . Thomas Motley Weddall, Selby.
- Piper, George Harry, 7, Gt. Quebec Street; and Ledbury . . . Thomas Jones, Ledbury.
- Pope, John Woodford, Exeter . . . John Daw, Exeter.
- Parry, Thomas, Carmarthen . . . Thomas Williams, Carmarthen.
- Palmer, William, 11, Egremont Place, New Road; and Letcomb Regis . . . Henry Godwin, Newbury.  
Edward Smith Bigg, Southampton Buildings.
- Penfold, William John, 23, River Street, Pentonville; and Brighton . . . Thomas Attree Somers Clarke and John Sidney M'Whinnie, Brighton.
- Powell, Edward Howell, Ripon . . . Thomas Farmery, Ripon.
- Peter, John, 17, Melton Street, Euston Square; and Callington . . . Samuel Benny Serjeant, Callington.
- Rodham, Thomas, 2, Millman Street, Guildford Street; and Wellington . . . William Rodham, Wellington.
- Richards, John, 6, Maize Hill Buildings, Greenwich . . . George Rooper, Lincoln's Inn Fields.  
James Ingram, Lincoln's Inn Fields.
- Reynolds, T. A. Fitzgerald, 11, Calthorpe St., Gray's Inn Road . . . John Bush, St. Mildred's Court.
- Sawtell, George Henry, 12, New Inn; and Sloane Street . . . John Teesdale, Fenchurch Street.  
E. Futvoye, John Street, Bedford Row.
- Smith, John Bridgeman, Truro; and Holles Street . . . Henry Sewell Stokes, Truro.
- Smith, Alexander Blucher, Holt; and Bradford . . . Richard Travers Way, Bradford.
- Sculthorpe, William, 33, Humberstone Terrace, Leicester . . . Jeremiah Briggs, Leicester.
- Smith, Montague George, Hemel Hempsted; Edinburgh; and Carlisle . . . William Smith, Hemel Hempsted.  
John Philip Dyott, Lichfield.  
Anthony Blyth, Burnham.
- Sharp, Henry Parkinson, 2 Verulam Buildings, Gray's Inn . . . William Sharp, Lancaster.
- Sole, John Lavers Liscombe, Devonport; Claremont Terrace; Albion Street; and Everett Street . . . Edward Sole, Devonport.
- Smith, Francis, Brixton Hall; Cainscross; Calthorpe Street; East St.; Cumming St. . . Henry Harris, Stroud.
- Simpson, John James, Derby; and Grenville Street . . . James Blythe Simpson, Derby.
- Southern, Francis R., jun., 3, Islington Green; and Walsall . . . Horatio Barnett, Walsall.
- Spencer, Edward George, 42, Commercial Road, Lambeth; and Keighley . . . George Spencer, Keighley.
- Turner, Albert, 41, Lorne Road, Stockwell; Portsmouth; and Basinghall Street . . . Charles Bettesworth Hellard, Portsmouth.  
Frederick Turner, Aldermanbury.
- Taylor, William Keating, Chorlton-upon-Medlock; and Manchester . . . Samuel Phillips Hitchcock, Manchester.
- Thurgood, George Frederick, 8, Northampton Place, Islington . . . William Thurgood, Saffron Walden.  
Wm. W. Oldershaw, Tokenhouse Yard.
- Towsey, Edward, 16, Chester Place, Kensington; and Brixton . . . John Williams, Verulam Buildings.
- Violet, William Brookman, 8, Judd Street; and Banwell . . . Emanuel William Violet, Banwell.
- Weatherall, Edward, jun., 4, King Edward's Terrace, Islington . . . Edward Weatherall, sen., King Edward's Terrace, Islington.
- Watson, Robert Green, Preston . . . Joseph Walker, Preston.
- Watson, William, Shrewsbury . . . George Harper, Whitchurch.
- Woodgate, William, 9, Woodland Terrace, Greenwich . . . William Tanner Neve, Cranbrook.
- Wood, John Prescod, York . . . John Wood, York.
- Weller, George, Brighton; and Lewes . . . William Penfold, Brighton.
- Wingfield, Philip James, 39, Oxford Terrace, Hyde Park . . . Frederic Vallings, St. Mildred's Court.
- Wright, John Kyne, 5, Brown's Terrace, Islington; and Canonbury Terrace . . . John Wright, Rathbone Place.

Wreford, John, jun., 16, Clement's Inn, Strand; Pentonville; and Lincoln's Inn Fields	John Gear, sen., Exeter. Henry William Sole, Aldermanbury.
Whiting, William, 22, Noel Street, Islington; Lambeth Ter.; Highgate Hill; Agincourt Square	William Harding Wright, Essex Street.
Wilkins, William Henry, 49, Great Coram Street	Richard Boswell Beddome, Nicholas Lane.
Whitelock, John William, Putney	Benjamin Austen, Gray's Inn.
Wilson, Benjamin, Millfield House, Edmonton	William Plater Bartlett, Nicholas Lane.
White, George, 18, Smith Street, Chelsea; and Nottingham Place	John Waite, Welbeck Street.
Warry, Ellis Taylor, 16, Clement's Inn	Robert Loosemore, Tiverton. Edmund William Paul, Exeter. Edwin Newman, Yeovil.
Wilde, John Thomas, Lisle Street; and Clifton	J. T. Woodhouse, Leominster.

*Added to the List pursuant to Judge's Order.*

Mantell, Alexander Houston, Farringdon	J. Wm. Wall, Devizes.
--	-----------------------

DECISIONS UNDER THE SMALL DEBTS ACT.

SHORTLY after the "Act for the better securing the payment of Small Debts" came into operation,\* a case of *Buchanan v. Forster* came under the consideration of Mr. Commissioner Fonblanque, at the Bankruptcy Court, when it appeared that the defendant, upon whom a summons was served under the 1st section of the act, had already been taken in execution in this action, and discharged from prison under the 7 & 8 Vict. c. 96, s. 58, upon the ground that the sum recovered by the judgment was under 20*l.* exclusive of the costs. The learned commissioner, under these circumstances, held, that the debt was satisfied by the arrest and imprisonment, and therefore dismissed the summons.

The same objection was taken in a case of *Hall v. Bell*, before Mr. Commissioner Goulburn.<sup>b</sup> The judgment in this case was for 5*l.* 7*s.* 6*d.*, exclusive of costs, and the defendant was arrested on a *ca. sa.*, directed to the sheriff of Oxfordshire, so far back as the 28th February, 1843. He was afterwards discharged from execution by a judge at chambers, under the provisions of the 7 & 8 Vict. c. 96, s. 58; and it was now submitted that he was not liable to be summoned upon the same judgment, under the 8 & 9 Vict. c. 127: and the

case of *Buchanan v. Forster*, above referred to, was cited.

Mr. Commissioner Goulburn, after perusing and considering the provisions of the statutes 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, expressed his entire concurrence in the opinion upon which Mr. Commissioner Fonblanque had acted. He thought the arrest under the *ca. sa.* operated as an extinguishment of the debt and satisfaction of the judgment, for all purposes except one,—which was specially reserved to the creditor by the 7 & 8 Vict. c. 96, s. 58. By that section, after the discharge of the debtor, the judgment remained in force, to the intent and purpose that the judgment creditor may have a remedy against the property and effects of the debtor, but there was no remedy reserved against the person of the debtor. The 8 & 9 Vict. c. 127, gave a remedy against the person of a debtor, and the 3rd section provided that imprisonment under that act was not to extinguish the debt; but the remedy under the latter act only existed in cases where there was an unsatisfied judgment in law and in fact. Here the judgment was satisfied for all purposes except one, namely, execution against the debtor's goods; and as the act which he was now called upon to administer operated against the person of the debtor, and not against his goods, it was inapplicable. Upon these grounds the learned commissioner dismissed the summons, but declined to make any order for the payment of costs, in respect to which he was of opinion he had no jurisdiction.

\* The act obtained the royal assent on the 8th August, 1845, and the case of *Buchanan v. Forster* was heard on the 18th of August.

<sup>b</sup> On Saturday, Nov. 15.

## QUESTIONS AT THE EXAMINATION.

*Michaelmas, 1845.*

THE examination of persons applying for admission on the roll of attorneys, took place in the Hall of the Incorporated Law Society, on Tuesday the 18th instant. Mr. Cancellor, one of the Masters of the Court of Common Pleas, presided. The other examiners were:—Mr. Clayton, Mr. Austen, Mr. Harrison, and Mr. Shadwell. The number examined was 118. We are enabled to state the substance and effect of the questions, and shall add the result of the examiner's decision.

The usual preliminary questions were put as to where and with whom the clerkship was served; the branches of law which had been principally attended to; the books read and studied, and the lectures attended.

For the convenience of the student, and to give a clearer view of the scope of the examination, we shall arrange the questions in the following order:

In the department of COMMON LAW, the questions may be thus classed:—

1. As to the *form and nature of actions*, the following were put:

State the several forms of action.

What is an action of trover?

What is the first step to be taken in such action?

2. With regard to the *plaintiff's proceedings* in an action at law, the questions were:—

What is the first step an attorney should take when applied to, to commence an action?

If the party against whom a writ of summons be issued cannot be served, what steps must the plaintiff take?

When the defendant has been served with process, what is the next step in the cause on the part of the plaintiff?

When the defendant has pleaded, what is the next proceeding on the part of the plaintiff?

3. The following relate to the steps to be taken by a *defendant*:—

What should a person after having been served with a writ do, if he have a defence to the action, and within what time?

If a defendant be advised to plead more than one plea to the action, how is he to proceed?

What makes several pleas valid?

If a plaintiff does not proceed in his action in due course after plea, can the defendant compel him to proceed, and how?

4. There were then some questions regarding evidence and trials, viz.:—

If a witness does not attend upon his subpoena, has the party who subpoenaed him any remedy, and what?

If upon the trial a juror be withdrawn, what is the consequence?

What is the difference between a nonsuit and a verdict for the defendant?

How is a verdict enforced?

It will be recollected that the candidates are required to answer in three or more of the five departments, of which common law and equity are two. We shall therefore next in order take the Questions on EQUITY and the Practice of the Courts.

1. As to the proceedings to be taken on the part of *plaintiffs* in the ordinary course of a cause:

What is the mode of proceeding to give a defendant notice of a bill in chancery being filed against him?

Must a subpoena to answer a bill in chancery be served within any specified time after it is issued? and, if so, within what time; and is personal service on a defendant necessary?

What is the course of proceeding on the part of the plaintiff if the defendant does not appear in proper time, or does not answer in proper time?

Within what time after a defendant has put in an answer which is considered insufficient must the plaintiff file exceptions to the answer? and, if the exceptions be not filed in time, what is the consequence?

In cases where the practice renders it necessary for the plaintiff to serve the defendant with a copy of the bill, and the service is not effected within that time, what step should the plaintiff take to cure the omission?

2. The questions as to *defendant's proceedings* were,

Within what time must a defendant appear to a bill after he has been served with subpoena? and within what time must he answer after appearance?

If exceptions be taken to an answer, how can a defendant avoid a reference to the Master if he wishes so to do?

When a defendant is required to put in a further answer in consequence of exceptions to his first answer having been allowed or submitted to, how long time is he allowed to put in such further answer?

3. As to *amended bills* and proceedings consequent upon them:—

Within what time must a plaintiff amend his bill after he has obtained an order for that purpose? and, if he does not amend within that time, what is the consequence?

By what process can a defendant who has appeared, be compelled to appear to an amended bill, and how is the process to be served?

4. The proceedings with regard to the *hearing* of a cause were thus inquired into:

Within what time after sufficient answer must the plaintiff set down his cause for hearing under the general rules?

At what stage of the proceedings and within what time does publication of the testimony of witnesses pass under the general rules, and what exception is there?

If a defendant is out of the jurisdiction of

the court at the time of filing the bill, and is so stated in the bill, and he afterwards, before the examination of witnesses, returns to England, what course should the plaintiff pursue?

5. The other questions under this head, were as follow :—

Suppose the plaintiff, after having entered an appearance for the defendant according to the general rules, apprehends that the defendant is likely to abscond without answering, can the plaintiff take any and what step to prevent it?

If a defendant be in prison under an attachment for not answering, is it incumbent on the plaintiff to take any, and if any what step? if he does not take such step, what is the consequence?

If a defendant has absconded or refused to obey the process of the court, and an appearance has been entered for him, and he does not afterward appear in person or by solicitor, what course should the plaintiff pursue to get on with his suit?

In the department of CONVEYANCING, it may be convenient to arrange the questions as follow :—

1. As to the nature and form of *deeds*.

In what case prior to the act, 8 & 9 Vict. c. 106, ("An act to amend the Law of Real Property") was a feoffment a necessary form of conveyance? and why?

Why is a feoffment no longer a necessary form of assurance?

What do you understand by the doctrine of estoppel?

Can estoppel arise upon a deed poll? and your reason.

2. As to the estates, conveyances, and dower of married women :—

Can separate estate be limited to an unmarried woman?

What effect has the ordinary clause in restraint of anticipation comprised in limitations to the separate use of a married woman, upon her becoming discover??

What are the modes by which dower is barred since the stat. 3 & 4 W. 4, c. 105, as to women married since the 1st of January, 1834?

When a woman seised of an estate of inheritance marries, who can properly grant leases thereof, and to whom should the rent be reserved, and with whom the covenants be entered into?

3. As to the powers of an infant to convey :

When the heir of a mortgagee in fee deceased is an infant, how is a reconveyance obtained?

Is there any custom which enables an infant to convey, by any and what form of assurance?

4. The other questions were as follow :—

What was the principal alteration effected by the Statute of Uses?

What is understood by the term "lying in livery," and "lying in grant?"

If A. (seised to uses to bar dower) appoint

the fee to B. to the use of C, D, and E, would the estates of C, D, and E, be legal or equitable?

Is there any mode by which a clergyman can mortgage his benefice?

To whom should notice of a second mortgage of an equitable estate be given?

The Questions in BANKRUPTCY and the Practice of the Courts may be classed in the following manner :—

1. As to obtaining and opening the fiat :—

What proceedings are necessary to be taken, and by whom, in order to obtain a fiat in bankruptcy?

What are the facts to be proved before the commissioner in bankruptcy on opening a fiat?

What acts of a trader are deemed acts of bankruptcy?

What are the means of effecting a compulsory act of bankruptcy?

2. The following relate to the bankrupt's property :—

State the rule with respect to leasehold property held by the bankrupt?

Is there any and what property in the bankrupt's possession which will not pass to the assignees?

Will after-acquired property of the bankrupt belong to the assignees, under any, and what circumstances?

What is the effect of bankruptcy on a trustee or executor with respect to the rights of the parties beneficially interested in the property held in trust?

3. The rights of creditors and persons dealing with the bankrupt :—

A creditor holds a mortgage security for his debt; what proceedings must he take to render the security available, and enable him to prove the deficiency under the fiat?

What are the rights of an annuitant under a fiat?

What alterations has been recently made with regard to the validity of transactions after an act of bankruptcy, but before the issuing of the fiat?

4. As to the bankrupt's certificate :—

How is a bankrupt's certificate of conformity obtained, and by whom is it granted?

From what debts and liabilities is a bankrupt discharged by his certificate?

5. The remaining questions were as follow :

Are any, and what, notices to be given in a suit, and at what stage of the proceeding, where the validity of the fiat is disputed; and what is the effect of such proceeding with regard to the costs?

To whom, and by what mode of proceeding, must an appeal be made in bankruptcy?

The Questions in CRIMINAL LAW and Proceedings before Magistrates, were these :—

1. As to the nature of offences :—

What is the distinction between a misde-

measur and a felony? and give examples of each.

Mention some instances of misrepresentation in obtaining goods which will be deemed false pretences?

On a conviction in a criminal case, is there any and what appeal, and to whom?

2. As to the proceedings and evidence on a criminal charge.

What is the mode of proceeding to remove an indictment into the Court of Queen's Bench?

Under what circumstances will the statement of a dying person be received in evidence?

3. As to the property of the convict:—

State the consequences of a conviction in regard to the property, real and personal, of the convicted person.

To what time does the forfeiture of a convict's property relate?

4. As to the jurisdiction of magistrates.

When and in what manner can articles of the peace be exhibited, and by and against whom?

Is there any and what authority by which a public footway may be altered or stopped up?

What jurisdiction have magistrates in regard to the delivery of possession of premises to a landlord?

Who is liable to the repair of a public bridge? and how is such liability to be tried?

5. The following are questions as to proceedings on the crown side of the Court of Queen's Bench:—

For what offences will a criminal information be granted, and what is the course of proceeding in such cases?

What is a writ of mandamus? in what cases is it usually issued, and what is the mode of opposing and trying its validity?

Describe a writ of quo warranto, and state some of the occasions on which it issues.

What is a writ of prohibition, and from what court does it proceed?

The Examiners met again on the 19th, when, after much deliberation, they passed 110 and postponed 8 candidates.

## LAW OF MARRIAGE.

*To the Editor of the Legal Observer.*

SIR,—In your paper of the 15th November you refer to Dr. Wiseman's evidence on the Law of Marriage at Rome. You certainly say that "it gives a view of the law entirely new to English lawyers." You might have added: "and believed to be entirely wrong."

I have reason to think that the Lord Chancellor considered the evidence to be erroneous. I know, too, that it took most men by surprise; and I was told that had Mr. Lythgoe been held to be *peritus*, so as to make his evidence admissible, he would have given evidence of a different sort.

The mode in which the case was disposed of, namely, on the effect of the Royal Marriage

Act, rendered it wholly unnecessary to go into further evidence: in the report it is so distinctly stated; and so it is in the note prefixed to the appendix in which the evidence is inserted. It was introduced as a matter of legal curiosity, not of legal authority.

I should not advise any one to rely on that evidence on any occasion in which such a question may arise.

AMICUS.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

32ND ORDER OF MAY 1845.

*To induce the court to appoint a guardian under this order, it is necessary to show that application has been made to those who are connected with such person, and that they refuse to act on his behalf.*

*The affidavit deposing to the unsoundness of mind of such a person should state that it continues up to the time of the application being made.*

In this case a motion was made under the 32nd Order of May 1845, for the appointment of one of the solicitors of the court to act as guardian for a person of unsound mind. An affidavit was produced of service of the subpoena upon a Mr. Snow, at whose house the person in question was living, and of the refusal of the solicitors for the other defendants in the cause to act for him, and of his unsoundness of mind. But there was no proof of any application having been made to Mr. Snow, or any other person connected with the party of unsound mind, to act on his behalf; and Lord Langdale refused to make the order, until proof of such application having been made and refused should be adduced.

Mr. Turner, for the motion, suggested also that the affidavit as to the unsoundness of mind was defective, in not specifying that the person who made it had recently visited the defendant, and that his unsoundness of mind still continued: a suggestion with which Lord Langdale fully concurred.

*Warner v. Platell*, Nov. 13, 1845.

### 122ND ORDER OF MAY 1845.—UNNECESSARY LENGTH OF PETITIONS.

A motion was made under this order, that the court would examine a petition and declare whether any part of it was of unnecessary length; but

Lord Langdale declined to do this, though he made an order referring it to the master to

inquire and state whether any part of the petition was objectionable on that ground.

*Shedd v. Birkett*, Nov. 14, 1845.

In the case of two petitions in the same cause, which appeared to the court of unnecessary length, Lord Langdale gave to the parties who presented them the option of amending them, or of having them referred to the master for the purpose of inquiry into their length.

*O'Neill v. Lucas*, Nov. 18, 1845.

Queen's Bench.

(Before the Four Judges.)

TRESPASS.—PLEADING.—LIEN.

*Where A. deposits a chattel with B. as a security of the repayment of a debt, an agreement to that effect is entered into between them, and A., by his own wrongful act, and in violation of the terms of the agreement, resumes possession of the chattel: Held, that the lien or special property, which the defendant had in the chattel, was not terminated by the wrongful act of A., and that in an action of trespass the agreement was admissible in evidence under the plea that A. was not possessed of the chattel.*

TRESPASS. Pleas: 1. Not guilty; 2. Not possessed.—It appeared from the evidence that the plaintiff was indebted to the defendant in the sum of 9*l*., and an agreement was entered into between them, that a cow belonging to the plaintiff should be given into the possession of the defendant by way of security for the repayment of the debt, but that the plaintiff should have the liberty of taking the cow every day from the field of the defendant, for the purpose of being milked. After this agreement had been entered into, the plaintiff took away the cow, and detained it for nearly three weeks, when the defendant went and retook it, for which an action of trespass was brought. The cause was tried before Mr. Justice Wightman, when a verdict was found for the plaintiff on the first, and for the defendant on the second issue, with leave reserved for the plaintiff to move to enter a verdict on the second issue.

Mr. M. Smith now showed cause.

It is contended on behalf of the defendant, that the agreement was not admissible under the plea of not possessed, and that it was only admissible under the plea of leave and licence. The agreement gives the defendant a special lien in the cow, subject to the right of the plaintiff to take it away at certain times. This special property is not divested by the wrongful act of the plaintiff, committed in violation of the terms of the agreement, therefore the agreement is admissible under the plea of not possessed. In *Jackson v. Cummins*,<sup>a</sup> it was held,

that no lien exists at common law for the agistment of milch cows. The action was trespass, and the defendant pleaded an agreement that the defendant should keep the cows until the amount for pasturage was paid. *Parke, B.*, in his judgment, says: "I think, after the recent decision in *Owen v. Knight*,<sup>b</sup> as to the effect of lien in actions of trover, the defendant would have done better to have pleaded that the plaintiff was not possessed of these cows, which plea would have been supported by proof of the lien, giving to the defendant a special property in them at the time of the trespass." By delivery of the cow to the defendant, the property vested in him, subject to the condition mentioned in the agreement which has never been performed. *Reeves v. Copper*.<sup>c</sup>

Mr. Butt, contra.

The plaintiff having the general property, the defendant could not deny that he was possessed of the cow. The effect of the agreement could only be, to give the defendant a right to acquire a lien, but that lien was not perfect unless accompanied by the possession of the chattel. A lien and special property are under the circumstances of the case convertible propositions. The cases where a right of special property is set up against the general owner under the plea of not possessed, are confined to instances where there is the possession of the chattel, and not the mere right to possession. The defendant should have pleaded that he took the cow by the authority of the plaintiff. This case comes within the principle laid down in *Whittington v. Bozall*<sup>d</sup> and *Ashmore v. Harvey*.<sup>e</sup>

Lord Denman, C. J.—It is now perfectly well established, that a lien may be given in evidence under a plea denying the property to be in the plaintiff. Then under the agreement the cow was given into the possession of the defendant, to be kept by him as a security for the repayment of his debt. The right which the defendant had was not altered or taken away by the privilege which the plaintiff had to take the cow away for the purpose of milking it. The facts, therefore, establish the defendant's lien; and it is a fallacy to say that the wrongful act of the plaintiff, not the voluntary act of the defendant, could deprive him of that lien.

Mr. Justice Williams concurred.

Mr. Justice Wightman.—The special property or lien which the defendant had was never lost, he never parted with it under the terms of the agreement, and the evidence therefore was properly admitted.

Rule discharged.

*Richards v. Symonds*, Michaelmas Term, 1845.

<sup>b</sup> 4 Bing. N. C. 54.

<sup>c</sup> 5 Bing. N. C. 136.

<sup>e</sup> 7 Car. & Payne, 501.

<sup>d</sup> 5 Q. B. R. 139.

## Queen's Bench Practice Court.

NEW TRIAL IN CASE OF PERJURY, WHEN  
TO BE MOVED FOR.

*In an action for work and labour, wherein the plaintiff obtained a verdict for 9l. 6s., the court refused to entertain a motion for a new trial after the usual time, although since the trial, and not until after the expiration of the term in which the motion might have been regularly made, it was discovered that the witness upon whose evidence the verdict was obtained had perjured himself at the trial, and although he had been indicted for the offence, and a true bill had been found against him.*

THIS action was brought to recover the amount of a bill for painter's and glazier's work done by the plaintiff at the defendant's house. The declaration contained counts for work and labour, and on an account stated, to which the defendant pleaded the general issue, and the cause was tried on the 28th of May last, under a writ of trial directed to the sheriff of Herts. The defendant produced evidence showing that although the plaintiff did the work in question, he was only a sub-contractor with another person who had been employed by the defendant. The plaintiff, however, called one *Hill*, who swore that the plaintiff had refused to go on with the work unless the defendant would agree to pay him, and that the defendant accordingly agreed to do so. Upon this evidence alone, the jury returned a verdict for the plaintiff for 9l. 6s.

*Byles*, Serjeant, now moved for a rule to show cause why a new trial should not be had, upon an affidavit stating that *Hill's* evidence was false, and setting forth facts conclusively showing that it must have been so; that *Hill* had been indicted for the perjury; that a true bill had been found against him; that he was to be tried at the next Spring assizes for Hertford; and that the falsehood was not discovered till the 16th June, when it was too late to apply to the court. The learned serjeant admitted that this motion ought in strictness to have been made in the course of last Trinity Term, within four days after the writ of trial was returnable. In this case, however, it had been impossible to do so, for the falsehood was not discovered till after the term had expired. *Tidd* (vol. 2, p. 912, 9th ed.) states that under some circumstances the courts have allowed a relaxation of the usual practice, and cites *Wilks v. Bennett*, Barnes, 443. and *Reynolds v. Simonds*, id. 446, to show that "in the Common Pleas, a motion for a new trial cannot be received after the four days, unless the foundation of the motion is a fact not disclosed to the party till after that time." Mr. Archbold is much to the same effect; and the question was, whether, under the peculiar circumstances of this case, the court would think proper to make an exception to the general rule. So soon as the falsehood was discovered, a summons was taken out before Mr. Justice *Wightman* at chambers for a stay of proceedings;

but that learned judge dismissed the application, and the defendant will be entirely without remedy if this rule be refused.

*Patteson, J.* — The sole ground upon which the defendant asks for the indulgence of the court is, that the falsehood was discovered so late as to render it impossible to come to the court within the usual time: that is not sufficient. In every case, even years after trial, applications of this sort might be made, if the present motion were entertained.

Rule refused.\*

*Spufford v. Brown.* Michaelmas Term, Nov. 6, 1845.

NEW TRIAL, THE VERDICT BEING AGAINST  
THE WEIGHT OF EVIDENCE.

*If the verdict be against the weight of evidence, a new trial may be granted, as well in case of trials before a sheriff, as before a judge, but the court will refuse to interfere where the case has been left to the jury upon the credibility of the witnesses.*

THIS was an action of *assumpsit*, and the declaration contained counts on a promissory note for 20l., for goods sold, work and labour, money lent, and an account stated. The defendant pleaded, except as to 1st count, non assumpsit, and to the whole declaration, payment and set-off; and thereupon issues were joined and taken.

At the trial, before the deputy-sheriff of Suffolk, it appeared that the note was given by the defendant to the plaintiff as a security for 20l. lent by the latter, but the defendant called two witnesses, (one of them his brother,) who swore that they had heard the plaintiff repeatedly admit, that the defendant had repaid him. The plaintiff produced the note, but called no witnesses to impeach the testimony of those just mentioned, and the under-sheriff directed the jury, that the question for them was, whether the note had been paid, and that their verdict would in a great measure depend upon whether they believed the wit-

\* In *Price v. Duggan*, (2 M. & G. 641,) which was an action of debt upon an indenture of apprenticeship, the defendant moved for a new trial, after the expiration of the usual time, upon the grounds that the party who was to have made the affidavit in support of the motion had gone to sea, and that a letter suggesting the propriety of making the application, and written by the plaintiff's counsel to the plaintiff's attorney, had not, in consequence of the latter having changed his residence, reached him till the term in which the motion should have been made had expired. A rule was refused, *Tindal, C. J.*, however, saying "that if the question between the parties had been one of importance, or if the verdict would have bound the title to property, the court would have been disposed to look more favourably on such an application."—*Reporter's note.*

nesses for the defence. A verdict having been found for the plaintiff,—damages 16l. 17s.

*Barstow* now moved for a rule to show cause why the verdict should not be set aside, and a new trial had, upon the ground that the verdict was against the weight of evidence, and submitted, that unless there was any inflexible rule against examining into evidence in case of trials before the sheriff, this application must be entertained.

*Patteson, J.*, said, that there was no difference in that respect between the case of trials before a sheriff and a judge, but to induce the court to interfere in either case, the verdict must be palpably against the weight of evidence. Here, however, the sheriff left the case entirely to the jury upon the credibility of the witnesses, and this rule must be

Refused.

*Walton v. Land.* Michaelmas Term. Nov. 7, 1845.

**EJECTMENT. — SERVICE OF DECLARATION, &c. BY POST.**

*Sending a declaration, &c. in ejectment to the tenant by post is not sufficient service in the absence of an acknowledgment by him that he received them before term.*

EJECTMENT for premises in the occupation of two several tenants, *Mrs. Hogg and John Simpson*. Service upon the former had been effected in the ordinary manner, and

*Charnock* now moved for a rule to show cause why service upon *Simpson's* daughter should not be sufficient, upon an affidavit stating, that on Oct. 31st, deponent served her with a copy of the declaration and notice upon the premises; "that at the time of service she informed him that her father was then at Dunbar, North Britain, that her mother was then at Newcastle-upon-Tyne, that neither of them would return till Nov. 3rd, and that she further stated, that her father was lodging with Mr. W., in Dunbar." The deponent then proceeded to state, that on the afternoon of the 31st Oct., he put a copy of the declaration, &c. into the post-office at Berwick-upon-Tweed, addressed to Mr. John Simpson, bookseller, care of Mr. Westport, Dunbar, the same being the address, &c. given by the daughter, and that the deponent believed that the copy so sent by post was delivered at Dunbar aforesaid, in the course of the evening of the 31st day of Oct. last.

*Patteson, J.* It is not stated that the daughter was served before term, and, in order to have made the service upon her available, there should have been an acknowledgment by the father that the copy served on her was received by him before term. Again, service by letter sent through the post-office, and that too at the last moment, is all that appears, and if this application were granted, all declarations would be served by post just before term. It does not appear that the tenants were joint tenants, and consequently there can be no rule.

Rule refused.

*Doe d. Patteson v. Roe.* Michaelmas Term. Nov. 13, 1845.

**Common Pleas.**

[Reported by ALFRED J. P. LUTWYCHE, Esq., Barrister-at-Law.]

**NOTICE OF TAXATION — EFFECT OF NOT GIVING.**

*The court will not, as a matter of course, set aside a judgment as irregular, because notice of taxation has not been given to the opposite party, but will exercise their discretion under the circumstances of the case.*

A RULE nisi had been obtained to set aside judgment and execution, and all subsequent proceedings, for irregularity, with costs; and also for the return of 198l. 14s., which had been paid to the plaintiff's attorney upon the defendant's arrest. The pleas in the action had been delivered without a serjeant's signature, whereupon judgment was signed; but no notice of taxation was given, as required by rule T. T. 1 W. 4, before the costs were taxed.

*Channell*, Serjeant, showed cause. — The judgment was regular. In *Lloyd v. Kent*, (5 Dowl. 125.) *Coleridge, J.*, said: "After the case of *Perry v. Turner*, I cannot treat the omission of a notice of taxation as an irregularity, so as to set aside the judgment and subsequent proceedings." In the case (1 Dowl. 300) thus referred to by the learned judge, the Court of Exchequer said: "We have cautiously avoided expressing any opinion as to whether a neglect to give notice of taxation of costs gives the defendant's attorney a right to set aside the proceedings for irregularity. The court has made an order regulating what notice shall be given, but it has not said what the consequences of not following that order shall be. It may be that the court would consider it as a matter on which they are to use their discretion in each particular case, and that in some cases they would set aside the judgment, in others they would not." It is true that in *Bolton v. Manning*, (5 Dowl. 769,) it was said by *Parke, B.*, that the rule which requires notice of taxation of costs does not apply unless the defendant has appeared; but that observation does not weaken the effect of the general rule laid down in *Perry v. Turner*.

*Shae*, Serjeant, in support of the rule. — As there is an affidavit of merits, the defendant is at all events entitled to have the rule made absolute upon terms imposed by the court. But it is submitted that the judgment and subsequent proceedings are irregular, and therefore that they ought to be set aside with costs. Judgment is not final on the officer's marking the record, but on his completing the taxation of costs; *Butler v. Bulkeley*, (1 Bing. 233); *Godson v. Lloyd*, (1 Gale, 244.)

*Tindal, C. J.* — It seems to me that in this case both parties have been wrong. In the first place, the defendant was wrong in delivering his pleas without a serjeant's signature, and so far the plaintiff was right in signing judgment after the delivery of such pleas. But



the plaintiff took a very wrong and improper step in taxing costs without giving notice of taxation to the defendant, which is the only notice the defendant has of judgment having been signed. Without deciding, however, whether the omission to give notice of taxation vitiated the judgment, we think that we may exercise a discretion on the subject, in conformity with the cases cited by my brother *Channell*, and it seems to us that the rule ought to be made absolute to set aside the judgment and subsequent proceedings, without costs on either side; the plaintiff undertaking to return the money, and the defendant not to bring any action for the arrest.

Rule absolute accordingly.

*Iderton v. Sill*, M. T., 1845.

#### SHERIFF'S FEES.—EXTORTION.

*Samble*, That before moving for an attachment against a sheriff, under stat. 7 Will. 4, & 1 Vict. c. 55, s. 3, there should be a reference to the master to say whether the sum charged by way of expenses be reasonable.

*Byles*, Serjeant, moved for a rule to show cause why an attachment should not issue against the sheriff of Gloucestershire, for a contempt in having demanded and taken, for the execution of process, greater fees and expenses than were allowed by the table of fees framed under the stat. 7 Will. 4, & 1 Vict. c. 55. He referred to *Slater v. Hames*, (7 M. & W. 413).

*Tindal*, C. J.—Should not your motion be to refer it to the master to say whether the sum charged by way of expenses was reasonable or not, before you make an application for an attachment?

*Byles* then shaped his motion in the form suggested by the court, and obtained a rule nisi, with liberty to file additional affidavits.

*Stiles v. Meek*, M. T. 1845.

#### ARRANGEMENT OF COMMON LAW BUSINESS.

##### QUEEN'S BENCH SPECIAL AND CROWN PAPERS.

*LORD DENMAN*, on Wednesday last, the 19th instant, observed that there had been but little opportunity for hearing cases in the special and crown papers during the present term, and he wished to take the earliest opportunity of intimating the course the court intended to pursue during the following term. The fifth day of next term would be special paper day,

and the sixth day would be crown paper day. The court would certainly not feel disposed to allow those days to be broken in upon by having, on the fourth day of the term, a list of intended motions for new trials. Those motions must be confined to the first four days of the term.

The *Attorney-General* did not think that there would be any probability of the motions for new trials running into the fifth day of the next term. There would certainly be no necessity for it.

*LORD DENMAN*.—There is no necessity for it at other times. The court will not permit it then.

#### THE EDITOR'S LETTER BOX.

OUR correspondent G. H. G., of Plymouth, we consider to be right in his interpretation of the Stamp Act. A feoffment, if the only instrument, is now chargeable with an additional duty commensurate with what the lease for a year stamp would have been if the conveyance had been by lease and release. The practice alluded to by Mr. Shadwell in his lectures, of making conveyances of very small properties by way of feoffment, to save expense, and which certainly prevailed to a considerable extent in some parts of the country, probably arose, irrespective of the question of the stamps, from the consideration that one deed was cheaper than two. Under the old Stamp Act, however, of 1804, stat. 44 Geo. 3, c. 98, which imposed on conveyance of land by way of sale a deed stamp only, and not an *ad valorem* one, the conveyance, as far as the stamps went, would, if by feoffment, have been one-half cheaper than if by lease and release,—that old act imposing a 1*l.* 10*s.* stamp on each deed.

We think "An Old Subscriber," at *Usk*, had better inquire of his London agent regarding the proposed company he mentions, and in the mean time suspend his opinion.

The communication of "A Young Attorney and Subscriber," at *Wellington*, shall be attended to.

The 4th Part of the *Quarterly Analytical Digest* of all the cases reported in all the courts, completing the volume for this year, will be published on Monday.

The *Legal Almanac*, Remembrancer, and Diary for 1846 is nearly ready, and will be found very useful in professional offices.

# The Legal Observer.

==  
SATURDAY, NOVEMBER 29, 1845.  
==

—“Quod magis ad nos  
Pertinet, et noscitur malum est, agitamus.”

HORAT.

## LECTURE ON THE ASSIGNMENT OF SATISFIED TERMS ACT.

s & 9 VICT. c. 112.

BY MR. CAYLEY SHADWELL.

THIS important act “to render the Assignment of satisfied Terms unnecessary,” will come into operation immediately after the 31st Dec. next, and we therefore gladly avail ourselves of the lectures just delivered by Mr. Cayley Shadwell, at the Hall of the Incorporated Law Society. After some introductory remarks, the learned lecturer thus proceeded:—

The act commences by a short preamble,—“Whereas the assignment of satisfied terms has been found to be attended with great difficulty, delay, and expense, and to operate in many cases to the prejudice of persons justly entitled to the lands to which they relate.”

The first question is, whether this be a correct representation of the state of the case,—whether (in parliamentary phraseology) “the preamble has been proved.”

In commencing his professional studies, one of the things that strike the student as peculiarly unintelligible, among the various oddities of our conveyancing machinery is, the amazing length of time for which in wills, settlements, and other instruments, lands are given to trustees for various purposes, so as apparently to postpone the enjoyment of the real owners of the estate to a time far beyond the period of human life. Terms of 100, 500, and 1,000 years are drawn out one after another, and very often in the same instrument, in a series that seems to stretch to the very “crack of doom.” But when it is pointed out that the objects for which these trust terms were created,—the punctual payment to a wife of her yearly jointure,—to children of their portions,—to mortgagees of their mortgage monies,—required that the periods should be very long and for all practical purposes indefinite, as it was uncertain when these various objects would be accomplished, while the necessity of retaining to the owner the various rights and privileges which the law attributed to the first estate of freehold, required on the other hand

that these trust estates should, however far extended, still have a fixed limit, that they might leave to that owner the superiority which the law gives to the estate for life, which is indeterminate and uncertain, overterms of years, however long, all of which it designates as mere chattel interests;—when these things are pointed out to him he begins to see the reason of these long terms, and to perceive that, however strange in appearance, they were the legitimate consequences of the feudal principles of our real property law.

But if the origin of these long trust terms be thus accounted for, another difficulty met the student when he saw what had been the method of dealing with them, after the purposes for which they were originally created had been accomplished.

When the jointress was dead, and her executors had been paid the arrears of her jointure,—when the children had come of age and had received their portions,—where the principal and interest of the mortgage monies had been satisfied,—why was it that the terms of years which had been created, to protect the jointure, to raise the portions, or to charge the mortgage, should not cease with the accomplishment of the object for which they were called into existence? The preservation of these terms after their original trusts had been satisfied is to be accounted for, by a doctrine of the courts of equity, which affects very extensively the law of landed property, the doctrine, namely, that *where between two conflicting claimants to land the equities are equal, that one of them shall prevail, who in addition to his equitable interest had also the legal estate in the land.* He who had both law and equity in his favour ought to prevail, it was said, over him who had only equity. This privilege, which may be thought, perhaps, to savour more of subtlety and over refinement rather than of sound practical reasoning, has been too long established by authority in courts of equity to admit of its being questioned, and it prevails even to the prejudice of another favourite rule, both of equity and common sense, that he who is *first in point of time is strongest in point of right.* Thus, if a man possessed only of an

equitable interest in his estate had mortgaged it twice over, not giving to the second mortgage any notice of the existence of the first mortgage, if the property were inadequate to the discharge of both mortgages, the second mortgagee, if he should discover that the legal estate was outstanding and should succeed in procuring the trustee of it to make a conveyance of it to a trustee for himself, would, though posterior in point of time, by the means of this legal estate, prevail over the first mortgagee who had as good a moral claim as himself, and was before him in point of date, and the first mortgagee must content himself with the second mortgagee's leavings. *Evans v. Hicknell*, 6 Ves. 184; *Goodtitle v. Morgan*, 1 T. R. 755; 3 Sugden's Vend. & Pur. 446, (10th ed.)

This being the settled doctrine of courts of equity with regard to the distinctions of the legal and the equitable estate, it led to the practice of keeping, in many cases, these long terms of years in existence, after the particular objects for which they were originally created had been effected. Thus, on a son or grandson paying off a mortgage for years made by his ancestor, it would occur to his legal adviser, that it was very possible that subsequent to the creation of the mortgage, the mortgagor, or some intermediate owner, might have charged the estate by judgment, grant of annuity, or in any other manner, without the present possessor knowing anything about it, and that as these charges, though then dormant, might start up any day, as they had not then any notice of them, it was worth while putting his client to the expense of a short deed, assigning this satisfied mortgage term of years to a trustee, upon trust for the present owner and his heirs and assigns, and to protect him and them against all intermediate charges and incumbrances of which they had no notice, if any such there were.

A term thus dealt with was called in common parlance "a satisfied term assigned upon trust to attend." That which on an owner paying off an incumbrance is a matter of prudence and calculation, as to the probabilities of there being any intermediate incumbrances or not, and which he may therefore in his discretion perform or omit, becomes in the subsequent dealings with the estate a matter of imperative and unavoidable necessity. On the estate being subsequently purchased or mortgaged, the adviser of the purchaser or mortgagee would be guilty of unpardonable temerity who finding in the abstract a term assigned to attend, should omit to require the assignment of it to a trustee for his client. When vested in a trustee for himself, it protects him against all claims of which he has no notice, and if he should be so ill advised as to omit to require an assignment of it, it may be used against him.

The older a term grew of course the greater number of possible claims it could operate as a protection against, and so highly were the protective powers of those old terms appreciated by practitioners, that it was sometimes the course where there was an apprehension of a

multitude of charges which it would be impossible to satisfy, not to search for incumbrances at all, but to rely exclusively on the protection of the term. One lawyer of the old school, in his day of eminent name, Mr. Lloyd of the chancery bar, in the enthusiasm of his admiration of these qualities of attendant terms, was wont to exclaim, "That one good old term was worth two inheritances."

On the objects being satisfied for which a term of years was originally created, there were three ways in which the satisfied term might be dealt with. The assignment upon trust to attend has been already described. It might also be surrendered and put an end to, and that was the proper conveyancing course to pursue when the person paying off the money secured by the term was also the person who had created the term, the settlor or mortgagor, for as the term could be a protection against only those incumbrances subsequent in date to itself, of which the persons using it had no notice, of course against his own incumbrances it could avail nothing, and therefore in that case it was the proper course for him to cause it to be surrendered. But there was a third course that might be pursued, and it was one that particularly in small properties was often resorted to, however improperly. On the money being paid off and the term becoming satisfied, it was left in the termor, for which course, so embarrassing often to the subsequent adviser on the title, there was no recommendation but its cheapness. It was something to save the expense of a deed whether of assignment or surrender. But when these satisfied terms afterwards appeared on the title, unassigned and unsundered, how were they to be treated? The most convenient method of disposing of them has hitherto been to *presume* that they were surrendered, but to raise that presumption, there must have been some dealings with the estate, such as a sale or mortgage on which, if the term had been in existence, it might have been presumed that it would have been either assigned or surrendered. *Emery v. Grocock*, 6 Madd. 54; *ex parte Holman*, cited in note 3, Sug. V. & P. 66, (10th ed.); *Townsend v. Champenown*, 1 Young & Jerv. 538. Lapse of time however alone was not considered sufficient to support a presumption of a surrender. *Doe v. Plowman*, 2 Barn. & Adol. 573, and what circumstances were and what were not sufficient to raise this presumption, was as embarrassing a question as any to which a conveyancer had to apply his mind, and the opposite conclusion, which different minds might draw from the same set of circumstances as to this presumption of a surrender, went far to prove the great difficulty attendant upon the present state of the law as to satisfied terms, as stated in the preamble of the act.

Satisfied terms which have never been assigned upon trust to attend, it was possible to presume the surrender of; but terms that have been once assigned by deed to a trustee in trust for an owner, or mortgagee, or purchaser, and to attend the inheritance, it was the settled

doctrine and practice of the profession to consider could not be presumed to be surrendered, but must be got in, in all cases of a purchase or a mortgage. There was one case, however, to the contrary, very celebrated among conveyancers, for the surprise and confusion that it created,—*Doe d. Hilder*, 2 Barn. & Ald. 782, a judgment of Lord Tenterden's. The case was also stated and commented upon at great length by Sir Edward Sugden, in his *Vendors and Purchasers*, (10th ed.) vol. 3, p. 49 to 66. It was highly distasteful to the profession, and met with repeated condemnation from the equity judges in general, and Lord Eldon in particular, and was now considered to be overruled, as may be seen at length in the passage from Sugden referred to.

When an inspection of the abstract determined what satisfied terms ought to be got in and assigned, a question remained, the answering of which satisfactorily was, perhaps, in nineteen cases out of twenty, productive of more trouble, delay, difficulty, and expense, than any other to which titles give rise.—*In whom is the term now vested?* Perhaps there had been no sale or mortgage of the estate for the last fifty years. The term remained undisturbed in the representatives of the old trustee or of the survivor of three or four trustees. Who was the survivor? A friend of the family, perhaps, or the clergyman, or very usually the family solicitor. He was dead, perhaps, many years ago, and all trace of his family was lost. But supposing them found;—did he make a will and appoint executors? and if he did, were they alive? and if not, who then represented them? Where were the certificates proving all the facts? and, above all, in *what courts* had the wills been proved, or the letters of administration taken out? In country places, and where the deceased persons were not wealthy, it was very much the custom to prove their wills, or to take out letters of administration to their estates, in the diocesan, archidiaconal, or other inferior ecclesiastical court, in the jurisdiction of which the parties might have happened to live. Wherever this was the case, a title depending upon the deduction of the representative to one of these attendant terms could never be considered as perfectly safe.

To a probate taken out in a court of inferior jurisdiction there was this most unfortunate objection, that if it should be proved to have been taken out in the wrong court, everything done under it was not voidable merely, but absolutely void, and whether it were right or wrong depended upon the most absurd distinctions. If the testator had *bona notabilia*, which was defined to be goods to the value of 5*l.*, in more than one diocese, (and 5*l.* owed to him by any good-for-nothing runaway would constitute *bona notabilia*,) the diocesan probate was good for nothing, and nothing but a prerogative probate would do. (1 Williams on Executors, 237, 3rd ed.) This was a defect which, from the frequency of its occurrence, practitioners were in most cases obliged to put up

with; but it was evident that in a contested case it would be very difficult to support a probate of this kind against a searching opposition. One very obvious and easy remedy as to this particular grievance would perhaps occur, that of a short act of parliament to put diocesan and prerogative probates on the same footing in this particular, and to make them both voidable only, and not void, so as to make good whatever may be done under them while in existence. But this simple remedy is understood to be earnestly opposed at Doctors' Commons, on the ground that there is scarcely business enough there, as it is, to support an independent bar, and that this superiority of prerogative over diocesan and other inferior probates was one of the things that drew business to London, and was therefore too valuable to be parted with without an equivalent. Be this, however, as it might, the uncertainty that hung over titles to terms depending on diocesan probates was felt to be a serious objection to the present state of the law; and this, added to the great expense and difficulty of pursuing the various inquiries that the tracing out of a representative to an old term usually occasioned, might not unnaturally be prominent among the reasons that swayed the legislature in passing the law then under consideration.

What was thought by the profession of these matters might be gathered from the form of the conditions under which land was usually sold, in which it was almost always found that the vendor was most scrupulously anxious to throw upon the purchaser all the expense and responsibility that an assignment of these terms might occasion. Such conditions proved nothing so much as the unsatisfactory state of the law, for were it not for that, they would be thought injurious to both parties: to the vendors, as tending to throw suspicion on the title; to the purchasers, as either throwing on them an expense which ought to be borne by those they buy of, or else making them, for fear of the expense, run risks which they ought not to incur.

Proceeding to the examination of the act itself, Mr. Shadwell said, the first question which occurred was, what, within the meaning of this act, was a *satisfied term*? And in considering this primary question, a good many difficulties arose, which must be settled judicially before it could be expected that this act, however well intentioned, could work harmoniously in practice. "A satisfied term by express declaration attendant upon the inheritance," were words with which in practice they were familiar; and yet, when they came to distinctions, it was very difficult to settle their meaning exactly, saying thus far they shall go and no further. To take the simplest case:—A tenant in fee simple, subject to a term of 500 years, to secure a mortgage, pays off the mortgage and takes an assignment of the term to a trustee for himself and his heirs, and to assign as he and they should direct, and in the mean time to protect the inheritance. A term in

that simple condition did appear to be clearly within the meaning of the act, and upon that case all the consequences of the act, whatever they might be, appeared to attach. And it seemed as if it were a simple case of this kind that the framer of the act had in view when he was drawing it. But go a step beyond this, and all seemed to be doubt and uncertainty. Suppose the owner to have mortgaged the estate in fee, and on that occasion an old term, the original trusts of which had been satisfied, was assigned to a trustee for the mortgagee, upon trust for better securing the mortgage money. Was a term in this situation a satisfied term within the act? It was satisfied in one sense, because its original trust had been satisfied, and it seemed to be as much within all the arguments drawn from convenience and public policy as the first case of the term held in trust for the tenant in fee. But there was another sense in which it could not be said to be satisfied, because it had been impressed with new trusts, and because there seemed to be no more reason why a term assigned upon trust, the better to secure money partly secured by a mortgage in fee, should be considered as satisfied while the money remained unpaid, than it would if, instead of the auxiliary, the term was the sole security. It was part of the machinery in the one case, and the whole of it in the other: but in the latter case, that of the term being the sole security, it seemed preposterous to deny that it was the subject of an unsatisfied trust.

The same sort of doubt and difficulty arose to the mind in considering the term as assigned upon trust to attend a settlement. There being so many doubts on this part of the act, it seemed probable that till enlightened by judicial practitioners, would be inclined to confine its meaning within the narrowest possible limits, and that except in the very plainest case where it was impossible to escape the words, they would require, as before, that terms should be assigned in the usual way.

[The second Lecture, which continued the commentary on this act, we trust we shall be able to give in our next number.]

## THE LUNATICS' REGULATION ACT.

8 & 9 VICT. c. 100.

THIS is an act for the Regulation of the care and treatment of Lunatics which received the Royal Assent on the 4th August last. It repeals various former Acts, and constitutes two Masters in Lunacy and a Board of Commissioners. These masters are to have the same rank as the masters in Chancery.

It will be sufficient to state a few of the clauses fully, and to give an analysis of the others.

1. The following acts are repealed, except as they repeal other acts: 2 & 3 W. 4, c. 107; 3 & 4 W. 4, c. 64; 5 & 6 W. 4, c. 22; 1 & 2 Vict. c.

73; 5 Vict. c. 4; 5 & 6 Vict. c. 87. *Provido* that present visitors and clerks shall act under this act till new ones are appointed; and that licences heretofore granted shall remain in force, unless made void by this act, &c.

The commissioners in lunacy under 5 & 6 Vict. c. 84, are to be henceforth called "The Masters in Lunacy."

2. That the persons already appointed and hereafter to be appointed under an act passed in the session of parliament holden in the 5 & 6 Vict., intitled "An act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs *de lunatico inquirendo*," whereby the Lord Chancellor is empowered to appoint two persons, to be called "The Commissioners in Lunacy," shall be and be called "The Masters in Lunacy," and shall take the same rank and precedence as the Masters in Ordinary of the High Court of Chancery.

The Commissioners in Lunacy are thus appointed:—

3. And be it enacted, That the Right Honourable Lord Ashley, the Right Honourable Robert Vernon Smith, Robert Gordon of Lewiston in the county of Dorset, Esq., Francis Barlow of Montague Square, Esq., Thomas Turner of Curzon Street, Esq., Henry Herbert Southey of Harley Street, Esq., John Robert Hume of Curzon Street aforesaid, Esq., Bryan Waller Procter of Gray's Inn, Esq., James William Mylne of Lincoln's Inn, Esq., and John Hancock Hall<sup>a</sup> of the Middle Temple, Esq., (which said Thomas Turner, Henry Herbert Southey, and John Robert Hume, and no other of the said persons, are physicians, and which said Bryan Waller Procter, James William Mylne, and John Hancock Hall, and no other of the said persons, are practising barristers at law of ten years' standing at the bar and upwards,) and their respective successors, to be appointed as hereinafter provided, shall be commissioners for the purposes of this act, to be called "The Commissioners in Lunacy;" and that such commissioners for the time being shall respectively hold their offices during good behaviour, and shall not, so long as they shall remain such commissioners, and receive any salary under this act, accept, hold, or carry on any other office or situation, or any profession or employment, from which any gain or profit shall be derived; and that there shall be paid to each of the six commissioners for the time being who shall be physicians, surgeons, or barristers of five years' standing and upwards, out of the monies or funds hereinafter mentioned, over and above their respective travelling and other expenses whilst employed in visiting any houses, hospitals, asylums, gaols, workhouses, or other places, in pursuance of this act, the yearly salary of 1,500*l.*, by four equal quarterly payments.

<sup>a</sup> Since deceased. See p. 91, *post*.

4. That as often as any commissioner appointed by this act or to be appointed under this present provision shall die, or be removed for ill-behaviour, or be disqualified, or resign, or refuse to act, or become unable by illness or otherwise to perform the duties or exercise the powers of this act, the Lord Chancellor shall appoint a person to be a commissioner in the room of the commissioner who shall die, or be removed, or be disqualified, or resign, or refuse or become unable to act as aforesaid, but so that every person so appointed in the room of a physician shall be a physician or surgeon, and every person so appointed in the room of a barrister of five years' standing at the bar and upwards shall be a practising barrister of not less than five years' standing at the bar, and every person appointed in the room of any other commissioner shall be neither a physician nor a surgeon, nor a practising barrister; and until such appointment it shall be lawful for the continuing commissioners or commissioner to act as if there were no such vacancy.

5. Provision for retiring pension to incapacitated commissioners. 4 & 5 W. 4, c. 24.

6. The commissioners to take the oath according to the act.

7. Commissioners to have a common seal.

8. That the commissioners or any five of them shall, as soon as may be after the passing of this act, meet at the usual office or place of business now occupied or used by the metropolitan commissioners in lunacy, or at such other place as the Lord Chancellor shall direct, and elect one of the same commissioners (not being a physician or a barrister receiving any salary by virtue of this act) to be the permanent chairman of the commission; and in case the permanent chairman for the time being shall be absent from any meeting it shall be lawful for the majority of the commissioners present at any such meeting to elect a chairman for that meeting; and in all cases every question shall be decided by a majority of voters (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes the chairman for the time being shall have an additional or casting vote.

The secretary is named in the act and removable as follows:

9. That Robert Wilfred Skeffington Lutwidge of Lincoln's Inn, Esq., shall be the secretary to the commissioners; and that the said Robert Wilfred Skeffington Lutwidge, and every secretary to be hereafter appointed, shall be removable from his office by the Lord Chancellor, on the application of the commissioners; and that as often as the said Robert Wilfred Skeffington Lutwidge, or any secretary to be appointed under this present provision, shall die, or resign or be removed from his office, the commissioners, with the approbation of the Lord Chancellor, shall appoint a person to be secretary in the room of the said Robert Wilfred Skeffington Lutwidge, or other the secretary who shall die or resign or be removed as aforesaid; and that the secretary for the time

being shall, in the performance of all such duties, and in all respects, be subject to the inspection, direction, and control of the commissioners; and that there shall be paid to the secretary for the time being, out of the monies and funds hereinafter mentioned, the yearly salary of 800*l.*, by four equal quarterly payments.

10. Provision for retiring pension to secretary. 4 & 5 W. 4, c. 24.

11. Power for the commissioners to appoint two clerks at 200*l.* a year each, and additional clerks.

12. Secretary and clerks to take an oath.

13. Clerk of the metropolitan commissioners to deliver all documents to the commissioners under this act.

14. The jurisdiction within which the commissioners are to grant licences, which is termed their immediate jurisdiction is then defined, being within seven miles of London, Westminster, or Southwark.

15. Commissioners to hold quarterly and special meetings for granting licences.

16. Provisions for summoning special meetings.

17. The justices of the peace in general or quarter sessions in all other parts of England to license houses for the reception of lunatics, and to appoint visitors.

18. Provision for appointment of a visitor in the place of one dying, being unable, disqualified, &c.

19. List of visitors to be published by the clerk of the peace in a newspaper and to be sent to the commissioners. Penalty for default.

20. Every visitor, being a physician, surgeon, or apothecary, to be remunerated.

The clerk of the peace, or some other person is to be appointed to be clerk to the visitors.

21. That the clerk of the peace, or some other person to be appointed by the justices for the county or borough in general or quarter sessions, shall act as clerk to the visitors so appointed as aforesaid, and such clerk shall summon the visitors to meet at such time and place, for the purpose of executing the duties of this act, as the said justices in general or quarter sessions shall appoint; and every such appointment, summons, and meeting shall be made and held as privately as may be, and in such manner that no proprietor, superintendent, or person interested in or employed about or connected with any house to be visited shall have notice of such intended visitation; and such clerk to the visitors shall, at their first meeting, take the oath required by this act to be taken by the secretary of the commissioners, *mutatis mutandis*, such oath to be administered by one of the visitors, being a justice; and the name, place of abode, occupation, and profession of the clerk to the visitors (whether the same shall be the clerk of the peace or any other person) shall within fourteen days after the appointment be published by the clerk of the peace for the county or borough in some newspaper com-

monly circulated therein, and within three days from the date of the appointment be communicated by the said clerk of the peace to the commissioners; and every clerk of the peace making default in either of the respects aforesaid shall for every such default forfeit a sum not exceeding 2*l.*; and every such clerk to the visitors shall be allowed such salary or remuneration for his services (to be paid out of the monies or funds hereinafter mentioned) as the justices for the county or borough shall in general or quarter sessions direct.

22. Provision for assistants to the clerk of the visitors. Oath of assistant.

23. Persons interested in any licensed house, or being medical attendant on any patient therein, disqualified to act as commissioner, visitor, secretary, clerk, or assistant. Disqualified persons acting, a misdemeanor. Physicians, &c., contravening, penalty 10*l.*

24. Fourteen days' previous notice of intended application for and plan of licensed house to be given to the commissioners or clerk of the peace.

25. No licence to include more than one house; but detached buildings, in certain cases, to be considered part of the house.

26. Notice of all additions and alterations to be given to the commissioner or clerk of the peace.

27. Untrue statement a misdemeanor.

28. A copy of every licence granted by justices to be sent to the commissioners.

29. Every person applying for the renewal of a licence to furnish a statement of the number and class of patients then detained.

30. Licences to be made out in a given form, &c., and to be for not more than thirteen months.

31. No licence, &c., in any borough without consent of recorder.

32. Charge for licences to be granted in pursuance of this act. Power to reduce the charge for the licence in certain cases.

33. Application of monies received for licences by the secretary of the commissioners.

34. Secretary of the commissioners to make out an annual account, to be laid before the Lords Commissioners of the Treasury, of all receipts and payments by him under this act.

35. Balance of payments over receipts may be paid out of the Consolidated Fund.

36. Application of monies received for licences by clerks of the peace.

37. That the clerk of the peace for every county or borough shall keep an account of all monies received and paid by him as aforesaid, and of all monies otherwise received or paid by him under or by virtue of or in the execution of this act; and such account shall respectively be made up to the first day of August in each year, and shall be signed by two at least of the visitors for the county or borough; and every such account shall be laid by the clerk of the peace before the justices at the Michaelmas general or quarter sessions, who shall thereupon direct the balance (if any) remaining in the hands of the clerk of the

peace to be paid into the hands of the treasurer for such county or borough, in aid and as part of the county or borough rate.

38. Balance of payments over receipts may be paid out of the funds of the county or borough.

39. Provision in case of the incapacity or death of the person licensed.

40. In case of a licensed house being taken for public purposes, or accidentally rendered unfit, or of the keeper wishing to transfer his patients to a new house.

41. Power of revocation of licences granted by justices.

42. Power of revocation and of prohibition of renewal of licences granted by the commissioners or by justices.

43. Hospitals receiving lunatics to have their regulations printed, and a resident medical attendant, and to be registered.

44. No house to be kept for the reception of two or more lunatics without a licence.

45. No person (not a pauper) to be received without an order and medical certificate.

46. Medical practitioner signing such certificate to specify facts upon which opinion formed.

47. Proviso, that a person may be received on a certificate signed by one medical practitioner only, under special circumstances, but a second medical certificate must be given within three days.

48. No pauper to be received into any house or hospital for lunatics without an order and certificate, signed as well by a medical practitioner as by a justice or clergyman and an overseer or relieving officer.

49. No medical practitioner who is interested in or attends a licensed house or hospital to sign a certificate for admission of a patient into such place.

50. Every person receiving a person as a lunatic into any house or hospital to make an entry thereof in a certain form.

51. Form of patient's disorder to be entered in "The Book of Admissions" by the medical attendant.

52. Every person receiving a patient into any house or hospital to transmit a notice thereof to the commissioners, and if within the jurisdiction of any visitors, then also to the clerk of such visitors.

53. Notices to be given in case of the escape of any patient, and of his being brought back.

54. Entry to be made, and notice given, in case of the death, discharge, or removal of any patient.

55. In case of the death of a patient, a statement of the cause of death to be transmitted to the commissioners, and, if within the jurisdiction of any visitors, to the clerk of the visitors also.

56. Abuse or ill-treatment or (in certain cases) neglect of a patient to be a misdemeanor.

57. Houses having 100 patients to have a resident medical attendant, and houses having less to be visited by a medical attendant.

58. The commissioners and visitors, in

houses licensed for less than 11 persons, may lessen the number of medical visits.

59. A book to be kept, to be called "The Medical Visitation Book," in which weekly entry is to be made, showing the condition of the house and of the patients.

60. A medical case book to be kept.

## NOTES ON EQUITY.

### UNDUE INFLUENCE FROM SPIRITUAL ASCENDANCY.

THE celebrated case of *Huguenin v. Baseley*, 14 Ves. 273, was treated by Lord Eldon and the counsel engaged in the cause as one of the first impression. It was a case, as most of our readers will remember, in which a clergyman, by the exercise of spiritual ascendancy, contrived to procure for a lady a very handsome settlement in his own favour, the effect of which was, to reduce her from a state of affluence to comparative poverty, and to disable her from giving any assistance to her mother and sisters, who had every claim upon her regard. The speech of Sir Samuel Romilly for the plaintiff, (a bill having been filed by the lady to set aside the deed,) is one of the few specimens that have been preserved of his forensic eloquence. Lord Eldon, in giving sentence for the plaintiff, did little else than echo and adopt the reasoning of her counsel.\* The substance of the decision was to this effect, namely,—

That a deed obtained by a spiritual adviser,

\* Here we cannot but express our regret, that in the equity reports it has of late become very much the fashion to omit the arguments of counsel altogether. This often arises from the extreme prolixity of the judgments. The reports, we are satisfied, would be not only more readable, but more useful to the profession, if they were done in the old way. We recommend the learned reporters to take example by Mr. Russell's labours in this department. It is since his time that the innovation which we are deprecating has sprung up. Instead of stating how the authorities cited in the argument were employed, the practice of the modern school is simply to say, "the following cases were cited," leaving the application of them entirely to the reader, who in general has neither leisure nor inclination to pursue the references, or to do more than collect the result from the speech of the judge,—which in general is given more in the form of an essay than a judgment. A judge's deliverance, whatever it may be in court, ought in the reports to be brief and oracular,—subject, of course, to occasional exceptions, where the importance of the matter justifies expansion.

through the improper exercise of the influence belonging to his sacred office, was contrary to public policy, and, as matter of example involving the best interests of the community, ought not to be sustained. Sir Samuel Romilly observed, that there was indeed no case in which the court had proceeded on such grounds; but he contended that, upon the general principles on which the court acted in the case of guardian and ward, and other relations of a cognate character, there was no doubt but the court must interfere. What, said this great advocate, was the authority of a guardian, or even of a parent, compared with the power of religious impressions, under the ascendancy of a spiritual adviser; with such an engine to work upon the passions; to excite superstitious fears or pious hopes; to inspire, as the object may be best promoted, despair or confidence; to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness;—that good or evil which is never to end. What are all other means to these? Though no direct authority is produced, your lordship, dispensing justice by the same rule as your predecessors, is not confined within the narrow limits of precedent, but will, when a new relation appears, look into the principles that govern the human heart, and decide, in a case far the strongest that has yet occurred, upon this ground alone, from its infinite importance to the community.

Lord Eldon decided on these large principles, thus so luminously and eloquently expressed. He decided against the defendant; ordering him to deliver up the deeds, and to pay costs.

Now it is very remarkable, that a case precisely in point was decided precisely in the same way, only forty-three years before, by Lord Chancellor Northampton; a case, too, which, from the strong expressions of judicial indignation which it occasioned, must assuredly have made great impression on the public in general, as well as the profession. It is reported in the 2 Eden, 286.<sup>b</sup>

The bill was filed by a maiden lady, Miss Norton, against the defendant Kelly, a Methodist preacher, stating that her acquaintance with this worthy commenced by a letter from him, informing her "that although unknown to her in the flesh, he made bold to address her as a fellow member of that consecrated body wherein the fulness of the Godhead dwelt." She invited him to her house, where

<sup>b</sup> Mr. Eden's reports were not published till 1818. They were taken from Lord Northampton's MSS. Sir Samuel Romilly's argument was in 1807, when neither a report nor a tradition appears to have existed of Lord Northampton's decision.



he took up his residence; and in a short time managed to get from her considerable sums of money, and at last persuaded her to become one of his congregation, and, what was more material, to execute a deed granting to him an absolute annuity of 50*l.*, secured upon her real estates in Yorkshire.

The defence set up to this bill was, that the lady had taken a great liking to the defendant, and engrossed the whole of his time and attention, and that she ought not to be permitted to revoke a gift for which she had received a consideration which she at the time considered valuable. The court, moreover, it was contended, ought to deal liberally and with toleration towards those who differed in religious opinion from the Church of England. And it was also pressed, as a circumstance of favour to the defendant, that he was in fact not a methodist preacher, "but a protestant dissenting minister—an independent preacher, living by the exercise of his talents and industry."

We shall presently see that Lord Northington was not much disposed to encourage this mode of gaining a livelihood. His lordship's speech in delivering judgment we shall compress into such a limit as may enable the reader to appreciate the vigour of a judge whose reputation has suffered from the want of adequate reporters.

He observed, that the case was the first of the kind that had ever come before the court; that no one respected *real* dissenters more than he did;—and God forbid that true dissenters of every kind should not be tolerated, or that the spirit of Christianity should in this kingdom lose the spirit of moderation. But very wide was the difference between dissenters and fanatics, whose canting and doctrines had no other tendency but to lift up their deluded votaries into the raptures of enthusiasm, or to plunge them into the very abyss of bigotry and despair. Shall it be said that this court cannot relieve against the glaring imposition of these men? That it cannot relieve the weak and unwary, especially when the sufferers are of the weaker sex? To say so, is by no means arguing agreeably to the practice and equity of the court. This court is the guardian of the helpless of every denomination, and the punisher of fraud and imposition in every degree. Yes, this court can extend the hands of protection; it has a conscience to relieve; and the constitution itself would be in danger if it did not. Here is a man—a subtle sectary—who robs his hearers under the mask of religion. He says to her, "Your former pastor has, I hear, excommunicated you; but let not these things discourage you. Put yourself in my congregation, wherein dwells the fullness of God!" How scandalous, how blasphemous is this! The lady comes to town by his persuasions, where, possibly, she had never been before; goes and lives in Surrey, as in an inquisition,—for she is put by him into a house

enviored by a high wall. In this place of inquisition she is tutored to be private in her charity, so that her relations who were injured were to know nothing of her present bounty. Let it not be told that this preaching sectary is only defending his just rights. I have considered this cause not merely as a private matter, but of public concernment and utility. I have given it a long and patient hearing; and, inasmuch as the deed was obtained on circumstances of the greatest fraud, imposition, and misrepresentation that could be,—let it be decreed that the defendant Kelly execute a release to the plaintiff Miss Norton of this annuity, and deliver up the deed for securing it; and let an account be taken of all sums of money paid by the plaintiff to the defendant, and all which sums, with the costs of this suit, he is hereby decreed to repay. I cannot conclude without observing, that one of his counsel with some ingenuity tried to shelter him under the denomination of an independent preacher: I have tried to spoil his independency.<sup>c</sup>

## CASES IN BANKRUPTCY.

### COURT FEES, WHEN PAYABLE UNDER 1 & 2 WILL. 4, c. 56.

THE public is deprived of one of the most obvious and least questionable advantages of a court of appeal, when the subor-

<sup>c</sup> The above judgment verifies what Lord Eldon once said of Lord Northington, — that "he was very firm in delivering his opinions." He had great energy of expression. Thus in a case, *Alden v. Gregory*, 2 Eden, 280, where fraud was proved, and the question was, whether delay would purge it, he said, "Never, while I sit here. Every delay arising from it adds to the injustice and multiplies the oppression." He was made Lord Keeper, without a peerage, in 1756, on the retirement of Lord Hardwicke. In this character, Sir Thomas Henley sat for several years as Speaker of the House of Lords,—but, not being a member of that body, he of course took no part in the debates. In 1760 he was relieved from this somewhat awkward predicament by being raised to the peerage as Baron Henley; and on the accession of George III. having surrendered the Great Seal, it was immediately returned to him in a new capacity, that of Lord Chancellor. He was in 1764, created Earl of Northington, by which title he is best known in the present day.

Those who may be struck with the fervor of the above judgment, will be surprised to find that the man who could speak so well had not the gift of writing. The pen was to him a torpedo. See his letters in the *Law Review*, vol. 2, p. 304, which show that a "good chancellor and a great lawyer could write in the language and with the elegance of a common housemaid."

dinate judges disregard the decisions of the appellate tribunal. It sometimes happens, however, that subordinate judges are not authoritatively informed of the judgments of the court of superior jurisdiction, in respect of the matters which form the subject of appeal, and from this defect in the system of procedure, opinions deliberately held to be erroneous are adhered to, and conflicting decisions multiplied. These observations are suggested by the circumstance, that during the term which has just concluded, more than one petition has been presented to the Court of Review, in cases in which fiats have been annulled before the appointment of a creditors' assignee, praying for the restoration of the sums of 10*l.* and 20*l.* respectively, which the Commissioners of Bankrupts held to be payable under the stat. 1 & 2 Will. 4, c. 56, ss. 46 and 55;<sup>a</sup> although the Court of Review had previously determined, in more than one case, that those sums were not payable until the official assignee had money in his hands belonging to the estate of the bankrupt, and until the appointment of a creditors' assignee.

As the payment of even so small a sum as 30*l.* is frequently inconvenient to a person against whom a fiat in bankruptcy has issued, and who immediately afterwards contrives to arrange satisfactorily with all his creditors; and the expense of a petition to the Court of Review is a matter of some importance, when the fund in respect of which the application is made is of so limited an amount, it is deemed advisable concisely to refer to the statutory enactments, and the reported cases in which the Court of Review has been called upon to put a construction upon those provisions.

The stat. 1 & 2 Will. 4, c. 56, sect. 46, provides, that there shall be paid to the accountant-general, to be placed by him to the account of the secretary of bankrupts, by the official assignee of each bankrupt's estate to be administered in the Court of Bankruptcy, out of the

first monies that shall come into his hands, and immediately after the choice of assignees by the commissioners, the sum of ten pounds. And the 55th section further enacts:—That for the purpose of raising a fund to meet compensations, there shall be paid by the official assignee of each bankrupt's estate, to be administered in the Court of Bankruptcy, immediately after the choice of assignees by the creditors, or as soon afterwards as a sufficient sum shall come into his hands for the purpose, over and above the sum hereinbefore directed to be paid by such official assignee, the sum of twenty pounds into the Bank of England, to the credit of the accountant-general, to the secretary of bankrupts' compensation account, &c.

The first occasion on which these sections appear to have been brought under the consideration of the Court of Review, was in the case of *ex parte Green*, in the matter of *Green*.<sup>b</sup> This was a petition of a bankrupt to annul the fiat, upon the consent of all the creditors. The bankrupt had applied to the commissioner, pursuant to the General Order of the 21st August, 1818, for a certificate of the creditors' consent to annulling the fiat, and although the official assignee had no money in hand belonging to the bankrupt's estate, the commissioner refused to sign a certificate until the sum of 10*l.* and 20*l.* respectively had been paid. After hearing the point argued, Sir John Cross (who then presided in the Court of Review) pronounced his opinion to the effect that the right to a supersedeas when all the creditors consented, was the right of the bankrupt, and that the fees to be paid out of his estate, under the sections above cited, were not payable until the official assignee had money in his hands for the purpose. The learned judge observed, that his opinion clearly was, that those fees could not be compelled to be paid until the official assignee had money in hand for the purpose, but that he had given the case great consideration, in deference to the opinion of the commissioner who had refused to grant the certificate. He added:—"I think there is a great difference between this certificate, which is merely used as the best evidence of a fact, and that of a commissioner when he certifies to a bankrupt's conformity, which rests entirely in the discretion of the commissioner."

The next case reported upon the provisions of the statute was, *ex parte Teague*, in re *Beranger*.<sup>c</sup> In that case, the petitioner was the solicitor to the fiat, and it appeared that a fiat issued against the bankrupt Beranger on the 10th October, 1844, and on the 11th October an official assignee was appointed, but that no creditors' assignee was ever chosen. Mr. Teague, the solicitor to the fiat, had a bill of 11*l.* due to him. The official assignee had a sum of 33*l.* only in his hands, and the commissioner considered that the fees directed by the stat. 1 & 2 Will. 4, c. 56, to be paid had

<sup>a</sup> On Wednesday, the 12th of November last, two petitions of this nature were brought under the consideration of the Court of Review, *ex parte Bardon*, in re *Bardon*, in which Mr. Holt was the counsel; and *ex parte Pocock*, in re *Pocock*, in which Mr. Bagley was counsel. In both those cases the order as prayed for was made, upon the mere statement of the object of the petitions, the Chief Judge remarking, that he had already decided upon the matter, and supposed the commissioners did not concur in his judgment.

<sup>b</sup> 1 M. D. & De G. p. 174, (June 1840.)

<sup>c</sup> 14 Law J. p. 18, Cas. in Bank. (Feb. 12, 1845.)

priority over the solicitor's bill. The Chief Judge,<sup>d</sup> having been satisfied by affidavit that there was no probability that a creditors' assignee would ever be appointed, expressed himself as follows: "I think, until the appointment of a creditors' assignee, the right of the public treasury to these funds does not accrue."

The next case in point of order was *ex parte Diamond*, in *re Diamond*.<sup>e</sup> This was a petition of the bankrupt, praying that the fiat should be annulled upon consent of creditors, although the fees had not been paid, and the commissioner had therefore refused to grant his certificate. In this case, creditors' assignees had been chosen, but the official assignee had no funds in hand. The court ordered the fiat to be annulled, subject to the production of proof of the consent of creditors.

The latest reported case is that of *ex parte Miller*, in *re Miller*,<sup>f</sup> where the bankrupt petitioned to have the fiat annulled, all the creditors consenting. In that case there had been two meetings for the choice of creditors' assignees, but no creditors' assignee had been chosen, and the commissioner refused to grant his certificate of the consent of creditors, until 20*l.* and 10*l.* were paid for court fees, and 2*l.* for the two meetings. The Chief Judge, after hearing the facts, said: "I am of opinion that the sum of 20*l.* does not, and the sum of 10*l.* does not, become due until the choice of assignees made by creditors; consequently these sums have not become payable in this case, in which no creditors' assignees have been appointed. I am also of opinion, that an adjourned meeting for the choice of assignees is a meeting within the 55th clause, and that the sum of one pound is not payable for such meeting: it is expressly excepted."

We have heard of another and a later case,<sup>g</sup> in which the sum of 10*l.*, directed to be paid under the 46th section, had been actually paid over by the official assignee to the credit of the accountant-general, before the appointment of creditors' assignees, and the fiat having been annulled before any creditors' assignee was appointed, the Lord Chancellor, on petition, directed the sum so paid to be repaid to the bankrupt.

It is to be hoped, that after this uniform series of decisions, the point may be considered as settled, and suitors relieved from the expense of future applications.

## STRIKING AN ATTORNEY OFF THE ROLL.

IN THE MATTER OF WILLIAM HENRY KING,  
AN ATTORNEY.

THE individual above mentioned had been

found guilty about a year and a half ago, of having conspired, with a Mrs. Emily Ann Birch, to defraud divers tradesmen in London of considerable quantities of goods, and was sentenced to eighteen months imprisonment. In this state of the case, Mr. Robinson, upon the part of the Incorporated Law Society, in Chancery Lane, applied to the court for a rule calling upon the defendant to show cause why he should not be struck off the roll. When cause came to be shown against the rule, it was urged upon the part of the attorney that he had brought a writ of error to reverse the judgment, and that the question of striking him off the roll ought to be adjourned until the result of the writ of error should be known; and the discussion was accordingly adjourned. The writ of error had since that time been decided in the defendant's favour by the Court of Exchequer Chamber, which reversed the judgment.

Mr. Robinson now (13th Nov.) moved the court that the rule be made absolute.

Mr. Pashley showed cause against this rule, upon the ground that, as the affidavits in support of it contained no statement of separate facts, but relied merely upon the existence of the verdict and judgment, and as the judgment had now been reversed and rendered void, the whole ground of the motion had been taken away. The learned counsel also relied upon several affidavits of persons in the profession of an attorney, who bore testimony in favour of the conduct and character of Mr. King for a great many years.

Mr. Robinson, in support of the rule, enumerated the overt acts which were set forth in the indictment, and among them, that which was most nearly connected with the defendant's professional character, was his having brought an action against Mrs. Birch for a fictitious debt of £2,000, pretended by all the parties to be due from Birch to himself, the object of which action was to keep away the goods which had been already obtained, and to prevent them from being available to meet the claims of the tradesmen by whom they had been actually furnished.

The court took time to consider its judgment.

On the last day of term, Tuesday, 25th of November,

Lord Denman adverted to the case, and said, that the court was of opinion that Mr. King, notwithstanding the decision of the Court of Error in his favour, ought not to be allowed to continue upon the rolls. The indictment, though insufficient in its form, set out a number of distinct specific acts of gross impropriety, of all of which the jury found the defendant guilty, and although he had made an affidavit for the purpose of showing cause against the present rule, he did not deny the commission of any of the acts with which he had been so charged. Reference had been made upon his part to a case in which an attorney, who had been convicted of a misdemeanour, had not been struck off the roll, because the acts of

<sup>d</sup> Vice-Chancellor Sir Knight Bruce.

<sup>e</sup> 14 Law J. p. 24, Cas. in Bank. 9th Jur. 234.

<sup>f</sup> March 17, 1845. 9 Jur. 234.

<sup>g</sup> Not yet reported.

which he had been convicted were not done in the course of his professional conduct as an attorney. It was, however, unnecessary to consider how far such a decision could be universally maintained, as there was evidence in the present case to show that in some parts of the transactions in which the attorney was involved, he acted in his professional character, by preparing warrants of attorney. Upon the whole matter, the court was of opinion that for the conduct of which he had been guilty, his name ought to be struck off the rolls of the court.

[Extracted from *The Times* of the 14th and 26th Nov., 1845.]

## LAW APPOINTMENTS AND PROMOTIONS.

MICHAELMAS TERM, 1845.

THE honour of knighthood was conferred on John Augustus Francis Simpinkson, Q. C., and Treasurer of Lincoln's Inn, on the 30th Oct.; gazetted, 11th Nov.

Edward Turner Boyd Twissleton, Esq., was appointed a Poor Law Commissioner on the 5th Nov.

We understand that the Lord Chancellor has been pleased to appoint W. G. Campbell, Esq., barrister-at-law of the Northern Circuit, to the office of Lunatic Commissioner, vacant by the decease of the late Mr. J. H. Hall. Mr. Campbell, it may be recollected, was one of the unsuccessful candidates for the office of Judge of the Westminster Court of Requests, at the late election.

## THE CASE OF HENRY HUGH PYKE.

DISBARRING.—RE-ADMISSION REFUSED.

THIS case was heard on the 25th November, before Lord Denman, Mr. Justice Williams, Mr. Justice Coleridge, and Mr. Justice Wightman.

Mr. Warren said, I am to move your lordships for an order authorising the registrar of the Incorporated Law Society to issue a certificate to Henry Hugh Pyke, authorizing him to practise as an attorney; it is a slight variation from the application which has been usual before the passing of the late Act of Parliament; but in substance it is a motion for the re-admission of an attorney.

My Lords, this is a case with which, I cannot disguise from myself that your lordships, and I believe nearly all the judges, are acquainted,—it is the case of a gentleman of the name of Pyke, who, as your lordships are aware, was recently at the bar, and has been disbarred. He was an attorney, it appears on these affidavits, actually in practice for a series of years before his name was taken off the Roll, at his own request, for the purpose of being called to the bar: that he then practised at the bar for some time, and then afterwards those events took place which led to the present application.

My Lords, I shall take the liberty of reading two affidavits which disclose rather

special and unusual circumstances on which this application is founded, as the shortest way of bringing the merits of it before your lordships.

The affidavit\* states that the deponent, Henry Hugh Pyke was duly admitted an attorney of this honourable court on or about the 13th day of May, 1830, and continued for several years to take out his annual certificate authorising him to practise as an attorney; that on or about the 1st day of February, 1836, this deponent was struck off the roll of attorneys, at his own request, with a view to be called to the bar; and in the month of January, in the year 1838, this deponent was so called to the bar by the benchers of the society of Gray's Inn; that for a period of nearly seven years he continued to practise at the bar, to the expressed satisfaction of his clients, and, as he believes and trusts, in a manner which met the approbation of the learned judges before whom he had the honour to appear, and the leading members of the bar, and also occasionally acted as a law reporter, but without pay of any kind; that on or about the 11th day of December last he was disbarred by the said society of Gray's Inn, for an alleged breach of etiquette, decorum, or manners, of which at the time, and up to the present moment, he is unaware he ever committed, there being no code or professional usage, conventional agreement, honour, or known rules for the regulation of etiquette at the bar or the inns of court, with which this deponent has ever been made acquainted. And this deponent further saith, he appealed from the said decision of the said society to the fifteen judges of England against his disbarment, when their lordships, after twice hearing this deponent, and after an intimation by the Lord Chief Justice Tindal, that the said benchers should reconsider this deponent's sentence, which intimation the said society did not attend to, their lordships, with regret, and without the slightest imputation upon this deponent, simply confirmed the said sentence at the end of last Trinity Term; that in his petition of appeal to their lordships as aforesaid, he submitted, that where the rules of etiquette are unwritten, it cannot be but that sometimes they will be violated in sheer ignorance, forgetfulness, or doubts as to their limits, and that there is no man who does not sometimes err; the utmost that could be expected was, that error when pointed out should be acknowledged and retrieved, and that there was nothing in this deponent's case, or in the present conduct of other barristers formerly solicitors now at the bar, to warrant so arbitrary an exercise of power as expulsion in the person of this deponent, to act by way of warning of forthcoming ruin either to those now practising at the bar or towards others who may cease practising as solicitors, with a view to be called to that degree, and that to punish deponent by a sentence of disbarment for a breach of etiquette, even had any been committed (which this deponent expressly

\* We might have abridged this affidavit; but as the application failed, it is due to the party to state the case in his own way.—Ed.

denied committing) as contrary to the original constitution and powers of the inns of court, as we find them laid down in ancient text-writers. And the deponent referred to the following extract from *Horne's Mirrour of Justice*:—Abuses of the Common Laws, chap. 5, p. 230, No. 42, where it is expressly laid down, that "It is abuse to suspend a pleader if he be not attaint of trespass, of which he is condemnablen to corporal punishment." And the deponent further submitted to their lordships, that the proceedings against the deponent originated in a degrading combination amongst certain barristers on the Home Circuit, in order to drive this deponent from that circuit, and who this deponent alleged, have on other occasions endeavoured to prevent barristers from practising on that circuit, and did not deserve the countenance which an inquiry set on foot from a love of justice or the honour of the bar is entitled to, and that it was derogatory from the integrity and honour of the benchers as a body, and the respect which should attend the exercise of their important functions, to be auxiliary in carrying proceedings so unworthy into effect. And that the compelling this deponent to enter on his defence before the charge against him of a breach of etiquette had been attempted to be established by a single witness, was inquisitorial and arbitrary in the extreme, and contrary to every principle of British justice and equity.

Lord Denman:—Mr. Warren, I do not know whether you mean to confine your address to the Court to reading what I perceive is a very voluminous paper.

Mr. Warren:—My Lord, it will not take two minutes longer. I trust your lordships see the difficulty of my position. I thought it both respectful and decorous to read to your lordships the affidavit.

And that the openness and candour of this deponent's conduct, (even had he committed any breach of etiquette,) is evidence of his moral rectitude, and that to punish him as a wilful wrong-doer would be to confound error of judgment with guilt. And this deponent submitted, that the particular ground or charge on which this deponent was disbarred not being stated by the benchers, this deponent was under great disadvantage in his said appeal to their lordships, to know on what ground the benchers proceeded. And this deponent further saith, he has been engaged about 22 years in the profession of the law in its various departments, and never left it for any other occupation, and that at the time of final disbarment aforesaid, this deponent had been about 11 years member of the society of Gray's Inn, and was of nearly eight years standing at the bar, and has never throughout his whole life committed any one act affecting the integrity, honour, or character of a gentleman. And this deponent further saith, that having been deprived of his status of a barrister at law by the court, he is desirous of again becoming an attorney.

It has been

done:—I believe the Attorney-general makes no technical objection.

The Attorney-General (Sir Frederick Thesiger):—Certainly, I take no technical objection.

Mr. Warren:—I am relieved, then, from reading that part of the affidavit. I believe everything required by your lordships has been complied with, in absolute strictness. There is another affidavit as to a matter of fact, to which I beg to invite your lordships' attention. It was sworn on the 18th November, and states that since the expiration of the last certificate deponent, taken out in the year 1835, he hath not directly or indirectly practised either in his own name or in the name or names of any other person or persons for his own emolument, or otherwise; but deponent admits that he availed himself of the well-known custom of the profession in retiring from it, and sold his professional connexion to a practising attorney and solicitor for a determinable annuity.

The affidavit then makes certain statements regarding that person, which it does not appear necessary or proper here to repeat:—concluding with the allegation, that nothing was realised from the estate of his successor to pay the deponent.

Now, my lords, these are all the affidavits on which this application is founded; and I venture to submit to the court that they disclose a clear case, unless they can be controverted by my friend's affidavits, for which I shall wait with some anxiety. I submit, on the authority of the cases which have recently been decided, that these facts warrant the application of this gentleman to be again put upon the roll of attorneys. There is a case which was lately before Mr. Justice Wightman, *ex parte Warner*, (6 Jurist.) "The applicant in this case had been originally an attorney, and was subsequently called to the degree of barrister-at-law. Being desirous again to resume the practice of his original profession, *Crompton*, in his behalf, moved that he might be re-admitted. [*Wightman, J.*—Has he been disbarred?] He has been regularly disbarred. *Wightman, J.*—If he has been regularly disbarred by an inn of court, the application may be granted." A motion of this nature was also, I think, made in the Exchequer; and there it was said, if the applicant had been regularly disbarred, the application might be made. Now, my lords, this affidavit states that Mr. Pyke has been disbarred, so as to satisfy those decisions. With reference to the cause of disbarring, I do not know whether my friend the Attorney-General will enter into that. I apprehend the cause of disbarment mentioned here is in no degree sufficient to warrant your lordships, in the exercise of your discretion, in refusing this application. If it should be gone into, I am quite ready to meet that case; but without troubling your lordships at present upon it, there is nothing on the face of these affidavits inconsistent with the facts I have stated; and those facts, as far as they are disclosed, warrant the application which has been made. This gentleman has been, as he swears, 22

years nearly in the profession, and he defies anybody to point at his having done any act inconsistent with the character and honour of a gentleman. Your lordships are the guardians of the honour of the profession, and look at the conduct of its members with a peculiarly watchful eye;—I earnestly hope it will always be so, as in fact it certainly must be for the interest of both branches of the profession;—still I hope your lordships will bear in mind that as to this gentleman the alternative is, — either he must be successful in the application which he earnestly and humbly makes to your lordships,—or in fact be deprived of bread for the rest of his life, having devoted 22 years to the practice of that profession, from which, if this application fails, he is driven.

The Attorney-General (with whom was Mr. Robinson) rose to oppose the application, on the part of the Incorporated Law Society.

Lord Denman. We do not think it would be proper to hear any opposition to this application: it is so perfectly clear that it ought not to be granted. When my brother Wightman said a party being regularly disbarred might be admitted, he did not suppose that that party had been disbarred for any misconduct;—it is quite clear upon the affidavit of this gentleman that he was disbarred by the Society of Gray's Inn in respect of some misconduct. He thinks proper to qualify it in very moderate terms, as "a breach of etiquette and good manners;" but I never heard of such a course being taken by any Inn of Court as to disbar a member of the bar without some grave and serious cause of complaint. It appears also by the same affidavits that that decision of the Bench of Gray's Inn was appealed from to the fifteen judges. I believe that all the fifteen judges were present, and there were two very long hearings. I can only say that I have no recollection of my Lord Chief Justice of the Common Pleas uttering any such sentiment as that which is deposed to; and if it were so, which is not impossible, it must have been on some collateral point, supposing in the course of discussion that that might have become an important point of the case; but it is quite plain it did not turn upon any point on which a rehearing would have been proper, because the judges, without directing any such rehearing, came unanimously to the opinion that the benchers of Gray's Inn had done what was due to the profession, and that the sentence which they had pronounced ought to be affirmed.

Here is a *res judicata* by the proper authority, which we cannot allow to be questioned at all in any subsequent proceeding, unless it should indeed be proved that the process itself had somehow been procured by fraud, or that some improper mode of obtaining the judgment had been resorted to. Nothing of that sort is imputed, nor is there anything said against the decision, except that the party condemned himself thinks proper to complain of it, and to say that it was an unjust one; for that is the result.

He also in this affidavit repeats, what was

stated before us on that occasion, that there was a conspiracy among the gentlemen of the bar to prevent his practising, from jealousy, I believe, of his chances of success. That being on this affidavit, I think it due to those gentlemen, and to the profession at large, to say, on my recollection of the case, that nothing of that kind appeared in the slightest degree probable; there is no foundation for any of those attacks made upon other persons which alone, by being proved, could have shown that the party himself was not subject to very serious censure.

Nothing of that kind was attempted to be proved in evidence—it was only surmised as upon the present occasion; I think it right also to add, that my opinion was formed much more upon the affidavits that had been used by the party himself, detailing all the circumstances of his own case, than by anything else that had occurred upon that occasion. I think it due to those who are concerned to take that share of the responsibility of the judgment upon myself, and to state that I believe that the opinion of the judges at large was mainly influenced by what appeared on the same statement.

Under these circumstances, I think that really it is almost trifling with our time, and the principles upon which all matters in public courts of justice must proceed, to say that with so very slight a complaint of what has been done on former occasions, it is impossible to give the least weight to the application that is now made on the assumption that the decision was wrong. Then supposing that it was right:—a person who has been disbarred by the Society of Gray's Inn for conduct which they thought required them to act in that manner, and for conduct which all the judges of England agreed with them in thinking necessarily led to the same result—a person in that situation could not possibly be admitted to practise as an attorney. It is very important to distinguish, in these cases, between the idea of punishing individuals, which may sometimes be proper, as examples must be set, and the principle of protecting the public against the practices of those who are convicted of improper conduct.

This gentleman appears certainly to have laboured under an unhappy incapacity to discover what it was that might be reasonably expected from a gentleman in the situation that he then filled, and to have shown that by conduct which certainly leaves my mind fully impressed with the opinion that he is not an individual who ought to receive the sanction of this court to practise as an attorney.

It is with very great regret that upon such occasions one suspects or hears that a person, in consequence of what has happened, may be deprived of the means of obtaining a livelihood, such as he might have done if he had conducted himself otherwise; but we are not responsible for those consequences;—we are responsible to the profession, and to the public, for the superintendence which is placed in our hands over the conduct of all the members of all branches of it.

It appears to me it is quite impossible to listen to this application.

The re-admission was accordingly refused.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

PRACTICE.—SETTING ASIDE *fi. fa.* FOR IRREGULARITY.

*Where a party is desirous of setting aside a fi. fa. for irregularity, on the ground of a defect in the form of the Order under which it was issued, the application should be to set aside the order.*

THIS was a motion to set aside a *fi. fa.* which had been issued in pursuance of an order for the payment of costs, on the ground of irregularity, the order having omitted the name of one of the parties liable, and the *fi. fa.* following the terms of the order.

The Master of the Rolls said, the application should have been to discharge the order and the *fi. fa.* issued in pursuance of it, and not the *fi. fa.*, for the latter being in accordance with the order was perfectly regular.

Motion refused with costs.

*Potts v. Dutton.* November 20, 1845.

PRACTICE.—SERVICE OF COPY BILL.—CONSTRUCTION OF 28TH ORDER OF MAY, 1845.

*Where a bill was served previously to Oct. 1845, an order may be obtained as of course for entering a memorandum of service, although more than twelve weeks may have elapsed since the service.*

*If an application to the court becomes necessary, under the 28th Order of May 1845, for leave to enter a memorandum of service, the court must be satisfied that the order is not sought for the purpose of delay.*

THE bill in this case was filed in July 1844, and the defendants being very numerous, it was deemed advisable to serve the greater part of them with a copy of the bill. As to several of them service had been effected before the Orders of 1845 came into operation, but many others were yet to be served, and the 16th Order of May 1845, Art. 2, having directed that service of a bill must be made *within twelve weeks* from the filing of the bill, unless the court should give leave for such service to be made afterwards, while the 24th Order of Aug. 1841, directed, that the plaintiff should enter a memorandum of such service at the Six Clerks Office, he first obtaining on motion, *without notice*, an order for leave to make such entry, which

should be granted on the court being satisfied of a copy of such bill having been served, and of the time of such service, two questions had arisen—1st. Whether as to those defendants who had been served previously to the Orders of May 1845 coming into operation, a special application was necessary for leave to enter a memorandum of service? and 2ndly. Whether as to others any special circumstances beyond those above stated were necessary to justify the court in granting the order? The plaintiff, therefore, now moved for leave to enter the memorandum of service.

Mr. Kindersley for the motion.

The Master of the Rolls said, that the Orders of May 1845, did not apply to those defendants who had been served previously to those orders coming into operation, and therefore, as to them the order would be made as of course. With regard to the defendants who came within the 28th of those Orders, as the granting the application was a matter of discretion with the court, the court must be satisfied that the application was not made for the purpose of delay, or for any improper object.

Mr. Kindersley said, that one of the defendants was resident in Italy, and as to him it was asked, that service on or before the 1st of Jan. next might be deemed good service.

The Master of the Rolls said, that was a special case.

*Fordyce v. Brydges.* Nov. 20, 1845.

### Vice-Chancellor Knight Bruce.

PRACTICE.—SERVICE OF SUBPŒNA.—33RD ORDER OF MAY 1845.

*Service of subpoena allowed upon a party residing at Baden-Baden; permission being given to serve him anywhere within the duchy.*

MR. Headlam moved, under the 33rd Order of May last, for leave to serve the defendant, Dickenson, with the subpoena. The affidavit stated that Dickinson had been staying at Baden-Baden for the last three years, with the exception of an occasional residence of two or three months at Munich. The affidavit was sworn on the 31st of October, and further stated that the deponent had received information of Dickinson's address, and that he had taken up his residence at a German hotel, with the intention of avoiding his English acquaintance, but without any intention of removing his quarters. It did not appear that the deponent, although informed of Dickinson's place of abode at Baden-Baden, had personally seen him.

His Honour granted the motion, and gave leave to serve the subpoena upon the defendant at any place within the duchy of Baden.

*Preston v. Dickenson.* M. T., 1845.

## Queen's Bench.

(Before the Four Judges.)

## CERTIORARI.—SESSIONS.—FEES.—CLERK OF THE PEACE.

*A table of fees to be received by the clerk of the peace was settled by the justices at quarter sessions, and sanctioned by the judges of assize for that county, according to the provisions of the 57 Geo. 3, c. 91. The justices, at a subsequent quarter sessions, made an order that the clerk of the peace shall not in future receive certain fees so allowed, namely, fees from defendants in misdemeanors.*

*Held, that a certiorari would lie to remove into this court an order so made by the sessions.*

*Held, that the clerk of the peace was legally entitled to the fees so allowed, and that the sessions, of their own authority, had no power to disallow any of the fees that had been so allowed by the judges of assize.*

A WRIT of certiorari had been obtained by the defendant Coles, the clerk of the peace for the county of Somerset, to remove into this court an order made by justices at quarter sessions, by which he was forbidden to take fees from defendants in cases of misdemeanors. In 1826 a table of fees was settled by the justices of Somerset at the general quarter sessions, and afterwards submitted to and approved of by the judges of assize, according to the provisions of the 57 Geo. 3, c. 91. About two years ago, a motion was made by a magistrate at quarter sessions, and ultimately carried by a small majority, that no fees should in future be taken by the clerk of the peace from defendants in misdemeanors. This order being brought up by certiorari, a rule nisi was obtained for the purpose of quashing it.

Sir F. Thesiger, Attorney-General, Sir F. Kelly, Solicitor-General, and Mr. M. Smith, now showed cause.

1. It was contended, that under the circumstances of the case, a writ of certiorari did not lie. The writ does not lie to remove any other than judicial proceedings. *Res v. Lloyd*.<sup>a</sup> Jacob's Law Dictionary, tit. Certiorari. 2. That the clerk of the peace had no right, by common law or by statute, to take these fees, and, therefore, that the order was a nullity. The statute 8 & 9 Vict. c. 114, had been passed for the purpose of abolishing fees of this description.

Mr. Crowder, Mr. Serjeant Kinglake, and Mr. Moody, in support of the rule.

1. The rule has been enlarged, and therefore it is now too late to object to the issuing of the certiorari. *Res v. Hartshorn*.<sup>b</sup> 2. The defendant, if he has not a common law right to these fees, has at least a right to take them by custom, which has been recognised by the statutes 55 Geo. 3, c. 50, and 57 Geo. 3, c. 91; *Regina*

*v. Baker*.<sup>c</sup> A table of fees has been sanctioned by the judges of assize, and it is not competent for justices at quarter sessions, of themselves, to abrogate a scale of fees which has been so allowed.

Lord Denman, C. J. — It appears to me that this order cannot be sustained. The first document to which I have to refer in this case is a table of fees which was made in the year 1826, under the authority of an act of parliament, and with the sanction of two judges then going circuit in this county. That table is *prima facie* a statement of fees that ought to be paid, and must be considered to be an enumeration of those which the judges had found to be legally due. It appears to me, from the import of the statute, that the judges had no power to create these fees, but they had power to ascertain and prescribe those which legally had been, and those which for the future should be paid. But those which were to be paid were required to be fees to which the party had been liable before the making of the order. I am not sure that it is not a proper argument to say that this alone is sufficient to give validity to the fees; but in addition to this, it is perfectly clear, from the 55 Geo. 3, c. 50, that fees of this description were formerly payable on the part of the defendants; and if so, then it is quite clear that the sessions here have assumed more power than properly belongs to them, when they say, as they do in this order, that none of these fees shall be payable in future. Then, having these matters brought before us in this manner, we are bound to say that the rights of the officer of the court having been thus judicially ascertained, the sessions have, in making this order, assumed a power which does not properly belong to them. It is needless, therefore, to enter on the question of jurisdiction; for in a case of great importance, as this is, we are bound to tell the quarter sessions that they have not proceeded in the manner in which the law warrants them. I am of opinion that this order must be quashed.

*Williams, J.* — It has been properly conceded by those who opposed this rule, that if any fees were legally payable this order could not be supported, for it suppressed all fees without exception. For the reason already stated by Lord Denman, it is clear that this order cannot be sustained. The 57 Geo. 3, c. 91, did not give the power of making new fees, but it is clear that fees of some sort must have been payable before these, and it was within the competency and jurisdiction of the quarter sessions and judges of assize to ascertain and regulate them. By the 55 Geo. 3, the matter was carried further; from that statute there was a distinct recognition of fees, which were at that time due and payable. The statute of the 8 & 9 Vict. c. 114, might have had the effect of inducing some hesitation on the part of the court, if it could be seen that the order only did that which that act, passed since the date of the order, had also done; but it was

<sup>a</sup> Cald. 309.<sup>b</sup> 2 Burr. 745.<sup>c</sup> 7 Adol. & Ellis, 502.



not necessary to advert to that statute, for the order was not in substance a mere anticipation of its provisions. It seems that there are certain stages of proceedings, and certain fees, to which that act did not apply. It does not, for instance, apply to the case of a traverser; but this order applies to all fees whatever, and does not leave any case untouched.

*Coleridge, J.*—I am entirely of the same opinion. It appears to me that this order is inconsistent with what has been done with respect to the table of fees, ascertained and settled under the authority of the 57 Geo. 3. The argument in favour of the order puts the matter too high, when it supposes that all fees whatever are abolished, or that none whatever can be taken by the clerk of the peace, because he was not an officer immediately entitled at the common law to take fees. It is certainly well known that the clerk of the peace is an officer who has been created in comparatively modern times, but when he was created he became, by analogy to the clerk of assize, entitled to fees of that sort which had been paid to that old and immemorial officer. But this, after all, must be decided on the modern statutes. Under the authority of one of those statutes the table of fees was created. It therefore becomes a question, how far what was then done can be justified in point of time. That statute enabled the sessions to ascertain and settle the fees and allowances, and this labour is to be performed in the most deliberate manner: for the ascertaining and settling are to be done at one sessions, to be again considered at another, and the table then agreed on is to be submitted to the judges of assize, who are to certify and confirm or alter the same, as to them may seem fit. When the final allowance has been made by the judges, the clerk of the peace has no right to take any other fees but what are set forth in the table, until the same process shall have been gone over again, and a new table established. It is a strong matter of inference in favour of his right to take the fees set forth in the table, that he is restricted from taking any other fees besides those which are there put down. The onus of showing that those fees which are on the table are illegal was clearly cast upon the other side. It was sufficient for the clerk of the peace to show that the fees he took were authorised by the table, and unless those fees are proved to have been legally disallowed, he is entitled still to take them. They do not appear in this case to have been legally disallowed by this order, and this rule must therefore be absolute.

*Wightman, J.*, concurred.

Rule absolute.

*The Queen v. Edward Coles*, Michaelmas Term, 1845.

#### Queen's Bench Practice Court.

##### RULE TO COMPUTE, SERVICE OF.

*An affidavit stating that a rule nisi to compute was served upon the defendant's sister-in-law, at his dwelling house, and that she was*

*a member of his family, is sufficient, though it be not sworn that the deponent had subsequently called at the house and ascertained that the rule had been delivered to the defendant.*

*Woolrych* moved to make absolute a rule nisi to compute, upon an affidavit stating that the rule had been served upon the sister of the defendant's wife, at the dwelling house of the defendant, and that the sister was a resident member of the defendant's family. A doubt had been expressed by one of the masters as to whether the affidavit was sufficient, as it contained no statement that the deponent had subsequently called and ascertained that the rule had come to the defendant's hands. It was submitted, however, that as the facts stated would raise a presumption that the rule had come to the defendant's hands, nothing further was necessary, and that the affidavit was sufficient.

*Patteson, J.*, (after consulting the master).—The affidavit states that the sister-in-law is a member of the defendant's family. I think that will do.

Rule granted.

*Pook v. Raphael*, Michaelmas Term, 1845.

##### PLAINTIFF IN ERROR.—LIABILITY TO COSTS OF THE DAY.

*If a plaintiff in error give notice of trial of an issue in fact, and, without countermanding such notice, withdraw the record, he may be compelled to pay the costs of the day.*

*Barstow* moved that the plaintiff in error might be called upon to pay the costs of the day, upon an affidavit stating that an issue in fact had been joined on the 4th of April; that notice of trial had been given for the Middlesex sittings after last Trinity Term; that the said plaintiff did not proceed to trial, nor countermand notice thereof, but withdrew the record. He admitted that he could find no authority for the present application: the practical treatises only said, that when in error issue is joined upon matter of fact, the defendant, as well as the plaintiff, may carry down the cause to trial, without a rule for trying it by proviso. (Tidd. 9th ed. 1175; Chitt. Archb. 8th ed. 504.) It might be objected, that as the defendant in error had an opportunity of carrying down the cause to trial himself, he could not call upon the plaintiff for the costs of the day; but it was submitted that there could be no force in the objection. It had not been thought safe to apply for judgment as in case of a nonsuit, for it seems that the defendant in replevin is considered not to be within the statute 14 Geo. 2, c. 17, (giving defendants the right to move for judgment as in case of a nonsuit,) because he is at liberty to carry down the record to trial himself. *Dennis v. Dennis*. 2 Saund. 336, n. (4).

*Patteson, J.*—I can see no reason why, under the circumstances stated in the affidavit,

a plaintiff in error should not pay the costs of the day, and you may take a rule absolute in the first instance.

Rule absolute.

*Greville, Esq. v. Sparding*, (in error); Michaelmas Term, Nov. 8, 1845.

### Exchequer.

#### ATTORNEY'S BILL.—TAXATION.—PARTY LIABLE.

*A party liable to contribute to a fund, out of which an attorney's bill is to be paid, is not a "party liable to pay" such bill within the meaning of the 38th section of the 6 & 7 Vic. c. 73. and cannot therefore apply for its taxation.*

*Quere, as to whether this court has any jurisdiction to order the taxation of a bill for business done on the crown side of the Court of Queen's Bench.*

A RULE had been obtained calling on Mr. Barber, an attorney of this court, to show cause why his bill of costs should not be referred for taxation. It appeared that the costs were incurred for business done upon the retainer of the surveyor of highways for the township of Rastrick, in defending certain indictments which had been preferred. The present application was made on behalf of the Manchester and Leeds Railway Company, and certain other rate-payers of the township.

*Martin and Addison* showed cause.—This court has no jurisdiction to order the taxation of a bill for business done on the crown side of the Court of Queen's Bench. A similar application had been made to *Coleridge, J.*, and he refused an order. The 37th section of the 6 & 7 Vic. c. 73, enables "the party chargeable by such bill" to apply for its taxation; but it cannot be said that the rate-payers are the parties chargeable within the meaning of that section, for it is the surveyor who retains the attorney, and who makes the rate for the purpose of reimbursing himself. Neither does this case come within the 38th or 39th sections, the former of which applies to persons "liable to pay" the bill, though not the "party chargeable;" and the latter relates to applications by a cestui que trust, in cases in which a trustee is chargeable by the bill.

*Knowles and Hoggins*, in support of the rule.—The 38th section is expressly framed to meet this case, in which the rate-payers are liable to pay the bill, although they are not the parties chargeable. The surveyor has no interest in the matter; but the rate-payers come within both the spirit and the equity of the section. The object of the legislature was, to enable any person to tax the bill who had a real interest in it. [*Rolfe, B.*—Is each rate-payer to apply for taxation?] A taxation on the application of one would be a taxation on behalf of all, in the same way as a bill might be taxed by one of several cestui que trusts.

*Pollock, C. B.*—The rule must be discharged. The question is, whether a person who as a

rate-payer contributes to a fund out of which the bill is to be paid, is a person "liable to pay," within the meaning of the 38th section. It seems to me that such a case comes neither within the language nor the spirit of the section. I can hardly imagine that it was intended to give to persons having this species of interest any right to tax the bill, without an express provision to that effect. In truth, there is another mode by which these rate-payers may protect themselves, namely, by objecting to the accounts before the justices at sessions.

*Parke, B.*—I do not think it necessary to give an opinion as to whether it is open to this court to order the bill to be taxed, the business having been done on the crown side of the Court of Queen's Bench; but I am strongly inclined to think that a common authority is given to all the courts. As to the real question, it appears to me that a person liable to contribute to a fund out of which the bill is to be paid, is not a party "liable to pay" the bill, within the meaning of the 38th section; and upon that ground the rule must be discharged.

*Alderson, B.*—A rate-payer is not one of those persons who are "liable to pay" the bill to the attorney or surveyor. He is clearly not liable to the attorney; and how can it be said that he is liable to the surveyor? The parties are not without a remedy, for if they have any real ground for taxation, it is their duty to apply to the magistrates at the time of passing the accounts, and the magistrates would neglect their duty if they allowed the accounts to be passed without the surveyor undertaking to have the bill taxed.

*Rolfe, B.*—Under the 27th section of the Highway Act, (5 & 6 Will. 4, c. 50,) the surveyor has power to make a rate, but the 44th section requires him to lay his accounts before the justices at a special sessions. Then suppose the case of a surveyor having paid a bill without a proper taxation,—his accounts would not be passed unless he got the bill taxed. It would lead to insurmountable difficulties if we were to hold that persons having any possible interest were entitled to apply to have a bill taxed.

Rule discharged, with costs.

*In re Barber.* Exchequer. Michaelmas Term, 18 Nov., 1845.

### CHANCERY SITTINGS.

After Michaelmas Term, 1845.

Lord Chancellor.

Thursday	Dec. 4	The 1st Seal.
Friday	5	Petition-day.
Saturday	6	
Monday	8	Appeals.
Tuesday	9	

## Master of the Rolls.

Thursday	Dec. 4	Motions
Friday	5	Petitions—The unopposed first.
Saturday	6	Pleas, Demurrers, Causes,
Monday	8	Further Directions, and Exceptions.
Tuesday	9	Petitions—The unopposed first.
Wednesday	10	Motions.
Thursday	11	Pleas, Demurrers, Causes,
Friday	12	Further Directions, and
Saturday	13	Exceptions.
Monday	15	Motions.
Tuesday	16	Petitions—The unopposed first.
Wednesday	17	Pleas, Demurrers, Causes,
Thursday	18	Further Directions, and
Friday	19	Exceptions.
Saturday	20	Motions.
Monday	22	Petitions—The unopposed first.

Short Causes and Consent Causes every Tuesday at the sitting of the court.

NOTICE.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

## Vice-Chancellor of England.

Thursday	Dec. 4	The 1st Seal.
Friday	5	(Petition-day and Short Causes
Saturday	6	
Monday	8	Pleas and Demurrers.
Tuesday	9	

## Vice-Chancellor Knight Bruce.

Tuesday	Dec. 2	Bankrupt Petitions.
Thursday	4	The 1st Seal.
Friday	5	Short Causes and Causes.
Monday	8	Bankrupt Petitions.

## Vice-Chancellor Stigam.

Thursday	Dec. 4	The 1st Seal.
Friday	5	Pleas, &c.
Saturday	6	Short Causes, Petitions, &c.
Monday	8	
Tuesday	9	Pleas, Demurrers, &c.

The Vice-Chancellor of England will not sit on the 19th December, and the business arranged for that day will be transferred to the day preceding. [The rest of the Sittings Paper will appear in our next number.]

## COMMON LAW SITTINGS.

## Queen's Bench.

## MIDDLESEX.

Wednesday	Nov. 26	Common Juries.
and daily to		
Wednesday	Dec. 3	Special Juries.
Thursday	Dec. 4	
and daily to		
Wednesday	10	

## LONDON.

Friday	Dec. 12	Adjournment day.
--------	---------	------------------

## Common Pleas.

## MIDDLESEX.

Wednesday	Nov. 26	Common Juries.
and daily to		
Saturday	29	Special Juries.
Monday	Dec. 1	
Tuesday	2	

## LONDON.

Thursday Dec. 4 Adjournment day.  
The three Special Juries appointed for Monday Dec. 1st, are disposed of; and only *one* of those for the following day (Tuesday) remains for trial.

## NOTICE.

Michaelmas Term, 9 Vict., 24th Nov. 1845.

The Court will on Tuesday, the 23rd Dec. next, hold a Sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the Court.

By the Court.

## Exchequer of Pleas.

After Michaelmas Term, 1854.

## MIDDLESEX.

Friday	Nov. 26	Common Juries.
Thursday	27	Customs & Com. Juries.
Friday	28	
Saturday	29	Excise & Com. Juries.
Monday	Dec. 1	Common Juries.
Tuesday	2	
Wednesday	3	Special Juries.
Thursday	4	
Friday	5	
Saturday	6	
Monday	8	
Tuesday	9	
Wednesday	10	

## LONDON.

Thursday	Nov. 27	To Adjourn only.
Thursday	Dec. 11	Adj. Day, Com. Juries.
Friday	12	Common Juries.
Saturday	13	
Monday	15	Special Juries.
Tuesday	16	
Wednesday	17	
Thursday	18	
Friday	19	
Saturday	20	
Monday	22	
Tuesday	23	

The Court will sit at ten o'clock.

## MASTERS EXTRAORDINARY IN CHANCERY.

From 21st Oct. to Nov. 22nd, 1845, both inclusive, with dates when gazetted.

Henderson, Alfred, Bristol. Nov. 28.

Jones, Edward Bryan, Newtown, Montgomery. Nov. 14.

Roberts, Hugh Beaver, Bangor, Carnarvon. Nov. 21.

Shipman, Robert Milligan, Manchester. Oct. 31.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 21st Oct. to Nov. 22nd, 1845, both inclusive, with dates when gazetted.

- Galsworthy, John and William, and Walter Watta, Solicitors and Attorneys, so far as regards the said Walter Watta. Nov. 4.
- Moore, Maurice Peter and Richard Rastall, Attorneys and Solicitors, New Sleaford. Nov. 14.
- Raimonde, Willoughby, and Edward William Gooday, Gray's Inn, Attorneys and Solicitors. Nov. 13.
- Tanner, William, and William Tanner, jun., Bristol, Attorneys. Nov. 14.

## BANKRUPTCIES SUPERSEDED.

From 21st Oct. to Nov. 22nd, 1845, both inclusive, with dates when gazetted.

- Brook, George. East Parade, Huddersfield, Dyer. Nov. 4.
- Ibbotson, Matthew, and John Ibbotson, Rivelin Paper Mill, Ecclesfield, York, Paper Manufacturers. Nov. 4.

## BANKRUPTS.

From 21st Oct. to Nov. 22nd, 1845, both inclusive, with dates when gazetted.

- Abbott, Samuel, Nether Stowey, Linen Draper. *Herniman*, Off. Ass.; *Reed*, Friday Street, Cheapside; *Trevor & Co.*, Bridgwater; *Stogdon*, Exeter. Nov. 18.
- Abraham, Godfrey, 51, Great Prescott Street, Goodman's Fields, Watch and Clock Manufacturer. *Bell*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Nov. 11.
- Ashcroft, William, sen., Bere Street, Butcher Row, Ratcliffe, Cooper. *Graham*, Off. Ass.; *Hartley*, New Bridge Street, Blackfriars. Nov. 4.
- Ashton, William, Pickering, York, Grocer. *Fearn*, Off. Ass.; *Coverdale & Co.*, 4, Bedford Row; *Parkinson*, Pickering; *Ward & Co.*, Leeds. Nov. 18.
- Atkin, William, Stockton-upon-Tees, Grocer. *Baker*, Off. Ass.; *Harle*, 2, Butcher Bank, New-castle-upon-Tyne; *Chisholme & Co.*, Lincoln's-Inn-Fields. Nov. 21.
- Bailey, Thomas, 1, Boot Lane, Bedminster, Builder. *Acreman*, Off. Ass.; *Hassell*, St. Stephen's Avenue, Bristol. Nov. 18.
- Bentley, Richard, Liverpool, Hosier. *Morgan*, Off. Ass.; *Cornthwaite & Co.*, Old Jewry; *Pemberton*, Liverpool. Nov. 14.
- Bellamy, William, 4, Clarence Place, Middleton Road, Kingsland Road, Builder. *Graham*, Off. Ass.; *Kearns*, 5, Red Lion Square. Oct. 28.
- Blackburn, Isaac, 128, Minorities, Northumberland Alley, Fenchurch Street, Engineer and Scale Maker. *Turquand*, Off. Ass.; *Barber*, Furnival's Inn. Oct. 28.
- Blackmore, William Henry, Dean Street, Soho, Plumber. *Bell*, Off. Ass.; *Wood & Co.*, Dean Street, Soho. Nov. 21.

- Blunt, Henry, Woolton, Lancaster, Licenced Victualler. *Cazenove* Off. Ass.; *Vincent & Co.*, Temple; *Jones*, Wm. Liverpool. Oct. 21.
- Boorman, John Luke, 13, New Road, Silversmith. *Follett*, Off. Ass.; *Matthews*, Arthur Street, West, London Bridge. Nov. 14.
- Bond, William Henry, Bow Lane, Cheapside, Ale and Beer Merchant. *Turquand*, Off. Ass.; *Mallby & Co.*, Old Broad Street Buildings. Nov. 14.
- Bowen, Charles, late of Harp Lane, Tower Street, Wine Merchant. *Green*, Off. Ass.; *Gale*, Basinghall Street. Nov. 21.
- Boucher, William Guy, 18, Stepney Green, Middlesex, Merchant. *Turquand*, Off. Ass.; *Ashley*, Shoreditch. Oct. 21.
- Breakwidge, John, Liverpool, Tailor and Draper. *Morgan*, Off. Ass.; *Sharpe & Co.*, Bedford Row; *Lowndes & Co.*, Liverpool. Oct. 21.
- Brown, John, late of Notting Hill, but now of 3, Hornsey Road, Builder. *Follett*, Off. Ass.; *Elderton*, Lothbury; *Richards*, Croydon. Nov. 21.
- Burns, William, Rhyll, Flint, Draper, Grocer, &c. *Cazenove*, Off. Ass.; *Reed*, Friday Street, Cheapside; *Sale & Co.*, Manchester. Oct. 28.
- Castle, Richard, Tynning, Gloucester, Grocer, Miller. *Acraman*, Off. Ass.; *Richards & Co.*, Tewkesbury; *Peters & Co.*, Bristol. Oct. 24.
- Challen, James, Odiam, Southampton, Brewer. *Edwards*, Off. Ass.; *Lindsay & Co.*, 26, Gresham Street, City. Nov. 11.
- Chaloner, William, High Street, Lincoln, Tailor. *Young*, Off. Ass.; *Pocock*, Bartholomew Close; *Mence*, Barnsley; *Bond*, Leeds. Nov. 21.
- Clayton, George, 1A, Queen's Road, Hornsey Road, Builder. *Follett*, Off. Ass.; *Wilson*, South Square, Gray's Inn. Nov. 14.
- Cooper, William, 50, Lower Shadwell, Ale and Porter Brewer. *Alsager*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Oct. 31.
- Crane, James, 11, Crooked Lane, Malster. *Groom*, Off. Ass.; *Randell*, 23, Birchen Lane. Nov. 18.
- Cunningham, Hugh, 193, Strand, Bookseller, &c. *Johnson*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Nov. 4 and 7.
- Daids, Moss, Paternoster Row, Fishmonger. *Groom*, Off. Ass.; *Brisley*, Pancras Lane, Cheapside. Nov. 4 and 7.
- Davis, George, 100, Borough High Street, Southwark, Saddler. *Bell*, Off. Ass.; *Buchanan*, Basinghall Street. Nov. 14.
- Darby, William Absalom, 3, Charles Street, Westbourne Terrace, Builder. *Edwards*, Off. Ass.; *Robinson*, 17, Orchard Street, Portman Square. Nov. 18.
- Docker, James, Birkenhead, Chester, Joiner and Builder. *Morgan*, Off. Ass.; *Frampton*, Gray's Inn; *Hillier*, Birkenhead. Oct. 28.
- Draper, Charles, Sun Public House, 140, Bishopsgate Without, Victualler. *Alsager*, Off. Ass.; *Smith*, Wilmington Square. Nov. 4 and 7.
- Elliott, John, Pavement, Finsbury, Surgeon. *Green*, Off. Ass.; *Taylor*, 12, North Buildings, Finsbury Circus. Nov. 4 and 7.
- Emmins, James, 3, Princes Road, Notting Hill, Builder. *Turquand*, Off. Ass.; *Rhodes & Co.*, Chancery Lane. Nov. 14.

- Faryon, William, 56, Faringdon Street, Licensed Victualler. *Follett*, Off. Ass.; *Lawrence & Co.*, 32, Beeklersbury. Oct. 24.
- Featherstonhaugh, Albany, Great Bolton, Lancaster, Butcher and Farmer. *Fraser*, Off. Ass.; *Grogory, & Co.*, Bedford Row; *Rushton & Co.*, Bolton-le-Moors. Oct. 24.
- Fitzgerald, Henry, 18, Bond Street, Commercial Road, Lambeth, Coal Merchant. *Turquand*, Off. Ass.; *Hindmarsh*, Crescent, Jewia Street. Oct. 31.
- Froeschlen, David, and Simon Price, 19, Dover Street, Piccadilly, Tailors. *Graham*, Off. Ass.; *Pike*, Old Burlington Street. Nov. 14.
- Gadd, John, 79, High Street, Camden Town, Baker. *Green*, Off. Ass.; *Hare*, Coleman Street. Nov. 4.
- Gainer, Joseph, Bridgend, Stonehouse, Gloucester, Dyer. *Hutton*, Off. Ass.; *Brisley*, Pancras Lane; *Paris*, Stroud. Nov. 4 and 7.
- Gill, Francis, Manchester, Hardwareman. *Hobson*, Off. Ass.; *Parker & Co.*, Bedford Row; *Motteram & Co.*, Birmingham; *Sale & Co.*, Manchester. Oct. 24.
- Greenstock, George, Weston-super-Mare, Somerset, Ironmonger. *Kynaston*, Off. Ass.; *Jones & Co.*, Crosby Square; *Peters & Co.*, Bristol. Nov. 4.
- Gurney, John, Union Brewery, Lambeth Walk, Surrey, Brewer. *Bell*, Off. Ass.; *Lawrence & Pless*. Oct. 24.
- Hamsher, Joseph, 7, Vine Place, Tabernacle Square, Glove Manufacturer. *Turquand*, Off. Ass.; *Brisley*, Pancras Lane, Cheapside. Nov. 21.
- Harding, William, sen., 5, Johnson Street, Westminster, and 23, Vincent Square, Mason. *Follett*, Off. Ass.; *Depree*, Laurence Lane, Cheapside. Nov. 4 and 7.
- Hardy, George, St. Ives, Hants, Innkeeper. *Johnson*, Off. Ass.; *Brisley*, Pancras Lane, Queen Street, Cheapside. Oct. 24.
- Harman, Charles Morgan, 55, Millbank Street, Westminster, Veterinary Surgeon. *Green*, Off. Ass.; *Barton*, 4, Wolsingham Place, Kennington Road. Nov. 21.
- Harvey, John Ownsworth, Newark, Grocer. *Whitmore*, Off. Ass.; *James & Co.*, Ely Place; *Spencer & Co.*, Waterloo Street, Birmingham. Nov. 18.
- Hawkins, Charles, Brick Lane, Spitalfields, Grocer. *Johnson*, Off. Ass.; *Tucker & Co.*, Threadneedle Street. Oct. 21.
- Hay, William, and John Alfred Titterton, 103, London Road, Oil and Coloursmen. *Follett*, Off. Ass.; *Loughborough*, Austin Friars. Nov. 4 & 7.
- Hoskins, George, late of Old Broad Street, now of Peckham, Watchmaker. *Green*, Off. Ass.; *Ashley*, Shoreditch. Oct. 28.
- Howard, Thomas, Rochdale, Woollen Manufacturer. *Hobson*, Off. Ass.; *Clarke & Co.*, Lincoln's Inn Fields; *Whitehead*, Rochdale. Oct. 28.
- Jones, Amos, Browns, Stroud, Gloucester, Innkeeper and Baker. *Hutton*, Off. Ass.; *Blower & Co.*, Lincoln's Inn Fields; *Kearsey*, Stroud. Oct. 24.
- Keley, William Lancelot, Tewkesbury, Printer. *Kynaston*, Off. Ass.; *Baylis & Co.*, Basinghall Street. Nov. 21.
- Kendall, James Carse, Canonbury Tavern, Islington, Tavern Keeper. *Graham*, Off. Ass.; *Wells*, Bell Yard, Doctors' Commons. Nov. 21.
- Kirkby, John, Shop Lane, in Kirkheaton, Fancy Manufacturer. *Fresman*, Off. Ass.; *Sudlow & Co.*, Chancery Lane; *Leadbeater*, Huddersfield; *Crisis*, Leeds. Nov. 11.
- Lack, Alfred, 12, Stockbridge Terrace, Saddler. *Bell*, Off. Ass.; *Robinson*, Half-moon Street, Piccadilly. Oct. 31.
- Lang, Lucy, Charter House Square, Private Boarding House-keeper. *Deane & Co.*, St. Swithin's Lane. Nov. 14.
- Leman, Edward, Church Row, Newington, Surrey, and Thomas Kinsman Bryan, Old Swan Pier, Upper Thames Street, Wharfingers. *Graham*, Off. Ass.; *Matthews*, Arthur Street, West, London Bridge, *Matthews & Co.*, Gravesend. Oct. 28.
- Levi, Samuel Mordecai, 149, Leadenhall Street, Navy Agent, &c. *Graham*, Off. Ass.; *King*, St. Mary Axe. Nov. 4 and 7.
- Lewis, Henry, Birkenhead, Joiner. *Morgan*, Off. Ass.; *Vincent & Co.*, Temple; *Cross*, Church Lane, Liverpool. Nov. 14.
- Liddell, Thomas, Boldon West Pastures, Durham, Corn Factor, Farmer, &c. *Baker*, Off. Ass.; *Harle*, Newcastle-upon-Tyne; *Chisholm & Co.*, Lincoln's Inn Fields. Oct. 31.
- Liptrot, Henry, Towahill, Wrexham, Denbigh, Boot and Shoe Maker. *Morgan*, Off. Ass.; *Nicholls & Co.*, Bedford Row. Nov. 4.
- Liptrot, Henry, Towahill, Wrexham, Denbigh, Boot and Shoe Maker. *Morgan*, Off. Ass.; *Nicholls & Co.*, Bedford Row; *Cunnah*, Chester. Nov. 7.
- Littlewood, John, 23, New Bond Street, Hosiery. *Follett*, Off. Ass.; *Goddard & Co.*, Wood Street, Cheapside. Nov.
- Lovegrove, John, 57, Rotherhithe Street, Rotherhithe, Barge Builder. *Graham*, Off. Ass.; *Fresman & Co.*, Coleman Street. Nov. 18.
- Lyon, William Hope, Liverpool, Cotton Broker and Merchant. *Morgan*, Off. Ass.; *Fletcher & Co.*, Liverpool. Nov. 4.
- Lyon, William Hope, Liverpool, Cotton Broker. *Morgan*, Off. Ass.; *Cotterill*, Throgmorton Street; *Fletcher & Co.*, Liverpool. Nov. 7.

[This list will be concluded in our next number.]

## THE EDITOR'S LETTER BOX.

WE had made arrangements for reporting all the practice cases which might come before the Lord Chancellor, especially those relating to the new orders. His lordship's lamented indisposition has deprived our reporter of his expected materials; but we hope the *Scales* after term, will be duly productive.

The letter of a subscriber at Manchester, on the feoffment stamp, shall be attended to.

The fourth part of the *Analytical Digest* was published in the early part of the week.

The *Legal Almanac and Diary for 1846* is now completed.

"A Subscriber," advertising to our notice of the new edition of *Chancery Practice* by Mr. Harding Grant, inquires how long that gentleman has been a solicitor of the court. Perhaps the author or his publisher will answer the question.

# The Legal Observer.

SATURDAY, DECEMBER 6, 1845.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## ASSIGNMENT OF SATISFIED TERMS ACT.

8 & 9 VICT. c. 112.

### SECOND LECTURE OF MR. CAYLEY SHADWELL.

On resuming the consideration of the Act to render the Assignment of Satisfied Terms unnecessary, Mr. Shadwell stated that his previous lecture was principally the result of his own consideration of the matter, unassisted by discussion with others. But in the interim he had had opportunities of communicating with a good many of his conveyancing brethren, and hearing their present thoughts on the interpretation of the act. He said their *present* thoughts, for among almost all the real property lawyers to whose opinions he had been accustomed to attribute the most weight, he found that all was doubt and uncertainty as to the meaning of its provisions: nobody prepared to give a clear and unhesitating opinion; great fears as to whether it would work well in practice; and considerable conflict of sentiment even upon the question whether or no the object the legislature appear to have had in view was in itself a beneficial one; — many asserting, that even supposing the machinery to work, the object was positively prejudicial, and that, instead of passing a remedial measure, the legislature, to use an expression of Vice-Chancellor Knight Bruce, in speaking of some other of our modern acts, had made a step backward.

The most forcible argument that he had heard against the *policy* of the act, — not the machinery or the particular provisions, but the policy, — was put in this way: —

That it being clearly for the benefit of a commercial country like this to facilitate as much as possible the means of transferring property from sellers to purchasers, it was of the highest importance to protect an honest and *bona fide* purchaser from all secret charges and incumbrances on the property of which he had no notice. That the best and most efficacious method of giving a purchaser that pro-

tection, would be by a general registry of all deeds, so as to make absolutely null and void everything that was not upon the register. That a general registry was the true and complete remedy, because applicable to all cases; but that the legislature having in its wisdom hitherto refused to pass an act for a general registry, it was premature and impolitic, in the present state of things, to deprive a purchaser of what, in the absence of a general registry, was the next best protection that he could get against secret charges and incumbrances, namely, the assignment to a trustee for him of one of these satisfied terms, when there happened to be such in existence, upon trust to protect him against these secret charges and incumbrances of which he had no notice.

To a remark, that now, from the consolidating all the old offices for registering judgments, &c., into one, and the requiring that to keep judgments on foot, there must be a re-registry of them every five years, the danger and apprehension of these secret charges and incumbrances were less than they used to be, it was replied, that that might be so with regard to judgments, orders in chancery, *lis pendens*, judges' orders, and so on, but that at any rate the case of a secret settlement was not touched by any of these alterations; that there was nothing to hinder a man who, having been tenant in fee, had made a settlement on his marriage under which he became only tenant for life, that there was nothing to hinder a man in this situation who had the possession of the title deeds, as was usually the case with the tenant for life, from suppressing the settlement and contracting to sell to a purchaser as if he was still tenant in fee simple. The settlement being suppressed, the title would appear all clear and fair, and the purchaser might accept the title, take his conveyance, and pay his purchase money, and yet his title as against the widow and children under the suppressed settlement be absolutely not worth one farthing.

Against a fraud of this nature, an assignment to a trustee of one of these satisfied terms would protect a purchaser, by giving the benefit of the first legal estate to support his equity,

G

which was equal, though not more than equal, to the equity of those claiming under the settlement: and it was argued, that it was highly objectionable to deprive a purchaser of the protection of a term against a fraud of this nature.

The argument was a weighty one, but the lecturer considered it by no means conclusive against the policy of the act. Things in this world, legislative and other, are usually settled upon a balance of opposite inconveniences. To retort the argument from public policy, it might be said, and he thought with great truth, that the expense, delay, and uncertainty attending the making out of representations to old terms, had a very serious tendency to impede the facility of buying and selling land. That all the transactions of life did not consist of buying and selling; that the legislature was bound to consider the interests of all parties equally,—the mortgagee, the annuitant, or the claimant under a settlement; that the case put of a suppressed settlement—which was not merely what the law calls a fraud, but a moral fraud, for which a man ought to be hanged—could not be considered as likely to occur often:—many more miscarriages in professional transactions occurring from carelessness, accident, or mistake, than from deliberate villany. And that to argue upon the case itself, that though it might be a great hardship that a purchaser should be deprived of an estate that he had bought and paid for; yet that it would be quite as great a hardship upon the widow and children claiming under the settlement to be deprived, without any fault of theirs, of the estate which they had always been living in the expectation of, and the settlement of which might, perhaps, have been one main inducement to the marriage, (the policy of encouraging marrying and giving in marriage being, to say the least of it, quite as clear as that of encouraging buying and selling land,) and that it seemed absurd, and not according to natural justice, but rather contrary to it, that a question of this kind between two parties, both with claims equally meritorious, should be decided by ascertaining whether there was or was not an old term of years existing upon the property, and if there was, which of the two had succeeded in getting hold of it. These were some of the arguments he had heard *pro* and *con*, as to the policy of the act; a policy which appeared likely to attract to a great extent the consideration of the profession, and, through them, of parliament, when it was debated, as seemed inevitable, whether it were possible to go on with the working of the act as it stood; to improve it by legislative amendment, or to repeal it altogether. There was one thing in which all the professional men, with whom the lecturer had talked on the subject of this act, were agreed, namely, that until the opinion of the profession was clearly and unequivocally made up,—till there were some decisions of the courts to guide them,—it would behove the practitioners to deal with this act in the most cautious way, not indeed

by refusing to consider the act as applying to the plain and simple case of a term assigned upon trust for a vendor and his heirs, and to attend the inheritance, for to deny the application of the act to this plain and simple case, would be to reduce it to silence altogether; but by leaning very much against the application of the act in any other than in the most plain and simple case, such as that which he had been mentioning, and giving the act a narrow rather than a broad interpretation.

One other piece of practical advice he had very generally heard was, that in transactions at present pending, particularly mortgages, where, under the old law, one should have said taking an assignment of terms was a necessary part, it would be highly desirable to bring them to a conclusion and get the deeds executed *before* the 31st of December, 1845.

Mr. Shadwell, after adverting to some of the principal points in his last lecture, in which he detailed the chief causes that led to the present enactment, proceeded to the further consideration of the act itself.

The act put an end to all satisfied terms of years attendant upon the inheritance of whatever kind, and then made an exception in favour of one kind only. It killed both kinds of terms, both terms not assigned upon express trust to attend the inheritance, and also the terms which were assigned upon that express trust: it killed both, but it revived only one. That part of the act, then, which after a given day put an end altogether to satisfied terms which were attendant upon the inheritance, not by express declaration of trust, but by construction of law only, appeared, as far as he had been able to consider it, to be free from the difficulties which surrounded the other branch of the enactment, to be praiseworthy in the object it attempts, and successful in its attempt. In the last lecture he had dwelt at some length on the difficulties which arose in abstracts from terms the trusts of which were satisfied, and then no more notice taken of them, and had adverted to the mode in which terms so situate were usually sought to be got rid of by *presuming* them to be surrendered, and the perplexity which the conveyancer often felt in deciding whether the circumstances were or were not sufficient to admit of such surrender being presumed.

The act disposed summarily and at once of these unassigned terms, which courts of equity had previously and in an imperfect and somewhat uncertain manner been in the habit of attempting to get rid of by *presuming* their surrender. This branch of the clause also was not attended with any difficulties arising out of the words "satisfied term," because these terms remaining as they were, with no new trust imposed upon them, there could be no hesitation as to whether their old primary trusts were satisfied or not. The only point that had occurred to him with regard to this branch of the clause that might perhaps cause perplexity was, in a case where there had been no actual assignment of outstanding terms made, but on a sub-

sequent mortgage or purchase there was inserted in the deed a general declaration, that all terms relating to the estate in whomsoever vested, should be held upon trust for the purchaser or the mortgagee as the case might be, and to protect the inheritance. Would an unassigned term, but with a general declaration of trust contained in a deed to which the trustee of the term was not a party, be within the exception of the 1st clause—"Except that every term of years attendant by *express declaration*."—"Express declaration," the general declaration of trust as to terms, though general, is itself express. The act does not say, "assigned upon trust to attend," but attendant by express declaration. The point will doubtless occasion debate when it arises, but in his (Mr. Shadwell's) judgment, an unassigned term with a general declaration trust in another deed, was within the meaning of the exception in the 1st section of the act.

It was with the exception that the difficulties of the act began. It said that, "every term within the exception though hereby made to cease and determine, shall afford to every person the same protection against every incumbrance, &c. as it would have afforded if it had continued to subsist but had not been assigned or dealt with after a particular day." How was it that in a court of law, as things stood at present, a legal term in a trustee afforded protection to a person possessed of an equitable interest for whom the term was held in trust? If it be sought to get possession of the land from a rival claimant, the trustee, the tennor, if living, or his executor, or administrator if he be dead, but in either case a living, real, actual man, brought the ejectment, made the demise on which the action was supported, and so on. He was the great actor fabula;—the only person on his side whom the court took notice of; the real and beneficial but merely equitable owner not appearing in the drama at all. But how would all this be under the act? Suppose the trustee in whom the term was, at the passing of the act, to be dead. Who was to bring the ejectment? Are the judges of the court of law, by permitting the creation of some new fiction, which they are not to allow to be questioned, to permit the action to be brought in the name of the trustee though he be dead? No, perhaps it will be said that seems very absurd. The executor of the trustee, if there be one, or his administrator if there be not, must administer to the term in the old way, and then bring the action; but the act has put an end to the term, and how can you administer to a term that has been put an end to? you may perhaps meet with some difficulty in getting your administration, and at any rate you will have to interpret your act in your own way at Doctors' Commons as well as at Westminster, and is it quite clear, that though every court of law and of equity were to consider the term as subsisting for this purpose, the enactment extends to ecclesiastical courts; are they included in the term "courts of law and of equity?" In common parlance one should say not, but the interpretation of a sta-

tute may probably be different. But supposing you succeed in getting your administration, and that that should be considered to be the right course to pursue, then at any rate this was clear that the great object of the act to save to parties the expense of taking out letters of administration to old terms was completely defeated. It might be conjectured, therefore, that the procuring a representation to the deceased trustee was not the course that the legislature intended should be pursued. We return then to the fiction to be supported by the judges, that the action may be brought in the name of the trustee though dead. But then again, who was to put this machinery in motion? The party beneficially interested, said the act. How are the judges to ascertain who is the party beneficially interested in equity? They did not usually take notice of equitable rights. Were they to do so in this case, or were they, as was ingeniously conjectured by a writer in the Jurist, to send a case to a court of equity to decide; and when the party beneficially interested was found, what was to be done with him? Was he to be made a party to the record, and in what character? On all these points the act left them entirely at sea, and it was manifest that, supposing the act not to be repealed or materially altered, these questions and many others that might be put could not be settled without great and expensive litigation. As to the few points on which, in his last lecture, he had ventured to give something like a positive opinion in connexion with the question of what was and what was not a satisfied term within the meaning of the act, the lecturer had since had the satisfaction of ascertaining, that what he then stated was in accordance with the opinions of a considerable number of the real property lawyers. He had not met with any dissentients from the opinion that, in the case of a mortgage a term of which the original trusts had been satisfied, and which on a mortgage in fee being made had been assigned to a trustee for the mortgagee upon trust for him, his executors, administrators, and assigns and for better securing the mortgage money and interest and subject thereto, in trust to attend the inheritance, a term in that condition while the mortgage subsisted was clearly not a satisfied term within the meaning of the act. One gentleman in particular, of good standing and experience, and of very extensive practice, quite laughed at a moment's question being made about it. He also thought it clear, that a term assigned to protect the uses of a settlement and to attend the inheritance, was not within the meaning of the act; the trusts of the settlement to raise money for younger children, and so on, being, as he observed, most usually in opposition to the inheritance. One method he had heard suggested of escaping from the operation of the act, where there was a mortgage and a term on the property to be purchased, which served at least the praise of ingenuity. Under the old law, the ordinary course was to make the mortgagee and mortgagor convey the fee simple to the purchaser, in consideration of his paying off the mortgage out of the purchase money,



and make the trustee of the term (the mortgage being extinct) assign it to a trustee for the purchaser, and to attend.

Instead of this, the course proposed was to assign the mortgage debt by a separate instrument, and then assign the term to a trustee to secure the mortgage, and so by that means keep the mortgage alive as a separate thing, though of course in trust for the purchaser, and the mortgage being thus kept separate, of course the term which was to secure the mortgage was not to be considered as satisfied while the mortgage was in existence. The method of keeping a mortgage alive, when it was in fact paid off by the purchaser, had been recognised as good conveyancing, when the purchaser's object was to avail himself of the priority of the first mortgage which he paid off against a subsequent mortgage which he did not pay. *Toulmin v. Steere*, 3 Mer. 210; *Parry v. Wright*, 1 Sim. & S. 369; 5 Russ. 142; Sugden's Vendors and Purchasers, (10th edit.) vol. 3 page 438, and it did not appear why the same method might not be pursued if the parties pleased in the case they had been considering.

## POINTS IN COMMON LAW.

### COPYRIGHT IN BOOKS PUBLISHED ABROAD.

THE course of bit-by-bit legislation pursued, and the multiplication of statutes, on the subject of copyright, has naturally created, amongst the public at large, and perhaps even in the minds of some members of the profession, whose attention has not been particularly called to the matter, very vague notions concerning the existing state of this branch of the law. The late statute for the amendment of the Law of Copyright<sup>a</sup> has somewhat simplified the subject, by repealing the previous statutes,<sup>b</sup> re-enacting their most important provisions, with variations, and introducing some new enactments; but it is only necessary to run the eye through any Index of the Statutes,<sup>c</sup> under the title "Copyright," to see how much remains to be done by consolidation. Perhaps it was an appreciation of the incertitude of the existing state of the law, which induced the legislature, in the interpretation clause of the statute first referred to,<sup>d</sup> to define the word *copyright*, which is to be construed to mean, "the sole and exclusive liberty of printing or otherwise multiplying copies of

any subject to which the said word is herein applied;" a definition adopted generally, with some verbal alteration, by the Court of Exchequer in its judgment in a late case,\* to which we are now about to direct attention.

The repealed statutes, 8 Anne, c. 19, and 54 Geo. 3, c. 156, were in force at the time when the transactions occurred which called for the determination of the court in *Chappell v. Purday*, but the applicability of the principles which this decision involves and of the authorities cited, to the present state of the law, as well as the national importance of the question discussed and decided upon by the court, justly entitles it to the description of a leading case.

The circumstances out of which the case sprung were as follow:—In 1829, M. Auber, a Frenchman, composed, at Paris, the overture to "Fra Diavolo," and soon after assigned it to a person named Troupenas, who, in January 1830, sold his interest in it to Latour, who, on the 13th February, 1830, at Paris, sold to the plaintiff the copyright in England. The piece was represented and the overture played at the Opera Comique, in Paris, before publication; but the overture was printed and published in Paris on the 5th March, 1830. In 1836, Auber, Troupenas, and Latour executed a joint assignment of the copyright in England to the plaintiff, and in May 1840 the plaintiff published in England. At a subsequent period, the defendant published in England, — for which publication the action was brought. The defendant by his pleas denied the copyright claimed, and that the plaintiff was proprietor. The facts upon which the argument chiefly turned and the judgment of the court finally proceeded, were, that at the time of the assignment to the plaintiff, (Chappell), no publication had taken place anywhere, but that there had been a publication in France by the assignor — a person lawfully entitled — before any publication in England.

In the judgment of the court two questions were considered: 1st. Whether, at common law, a foreigner, composing a work abroad, can acquire a copyright in it in England? and, 2ndly. Whether a foreigner or his assignee acquires any right by virtue of the statutes?

As to the first point, it appeared that the general question, whether there was such a right at common law—without reference to the distinction between native and foreigner — was elaborately discussed so far back as the time of

<sup>a</sup> 5 & 6 Vict. c. 45.

<sup>b</sup> 8 Ann. c. 19; 41 Geo. 3, c. 107; and 54 Geo. 3, c. 156.

<sup>c</sup> See Crabb's Dig. & Index. Maxwell & Son, 1843.

<sup>d</sup> 5 & 6 Vict. c. 45, s. 2.

\* In *Chappell v. Purday*, Trin. T. 1845, (14 Law J. 258, Exch.), it is said by Pollock, C. B., (pronouncing the judgment of the court,) "The copyright is the exclusive right of multiplying copies of an original work or composition, and consequently preventing others from so doing."

Lord Mansfield,<sup>1</sup> and a majority of the judges then held, that such a common law right existed, but that it was controlled and limited by the statute of Anne. The Court of Exchequer was now unanimously of opinion that no such right exists in a foreigner at common law, and that a British subject may, at common law, print and publish in Great Britain any number of copies of a French work, without being exposed to an action at the suit of the French author, who, if he has an exclusive privilege under the French law, does not thereby acquire any exclusive privilege in this kingdom.

The determination of the question, whether, upon the construction of the statutes relating to copyright, a foreign author or his assignee has an exclusive right in this country, depended in some degree upon what was termed the natural construction of the statutes, and also upon decided cases. The statutes 8 Ann. & 54 Geo. 3, clearly referred to works first published in the United Kingdom, and where they spoke of authors and inventors being subjects of and residents in the United Kingdom, they did not apply to foreigners residing abroad. It was not suggested that a judicial construction had been put on those statutes in any case, which could be said to be so directly in point that the determination ought to bind the court in the present case, but several cases were referred to having an important bearing upon the matter under consideration. In the first case on the subject,<sup>2</sup> the points determined were, that the plaintiff, who was not the author nor the assignee of the author, gained no right by a first publication in England, and that the assignee of an author had no exclusive right here if another had first published in this country. In the next case,<sup>3</sup> there was a dictum of the Vice-Chancellor of England, that the court does not protect the copyright of a foreigner. In *Guichard v. Mori*,<sup>4</sup> Lord Chancellor Brougham decided, that a person who purchases the right to publish a book here, which was written by a foreigner and previously published in a foreign country, could not support a claim to copyright in this country, either at law or in equity. In *Page v. Townshend*,<sup>5</sup> the Vice-Chancellor of England expressed an opinion that the object of the legislature in the statutes as to engravings, was to protect works designed, engraved, etched, or worked in Great Britain; and in *Bentley v. Foster*,<sup>6</sup> the same learned judge decided that the statutes 8 Ann. & 54 Geo. 3, did not extend to a foreign author and

his assignees, if he or they first published in England, — but there is an ambiguity in the report of this case. Lastly, in *D'Almaine v. Bossey*,<sup>7</sup> Lord Abinger, (sitting in the equity side of the Exchequer,) granted an injunction to restrain the piracy of music composed by Auber, at Paris, but first published by his assignee, a British subject, in England. The result of these cases, which occurred between the years 1824 and 1835, appeared to be, that if a foreign author publishes first in England, he may have the benefit of the statutes, but if he publishes first abroad, no case decided that a subsequent publication in England gives a copyright.

In the course of the judgment the court adverted to the stat. 4 Geo. 3, c. 107, which protects against piracy by importation from abroad, works first composed, written, printed, or published in "this kingdom;" and the International Copyright Act, (1 & 2 Vict. c. 89,) which empowers her Majesty, by order in council, to give to the authors of works published abroad the sole liberty of printing in the British dominions, for a term not exceeding that to which British subjects are entitled, as both favouring the construction, that a foreigner who first publishes abroad is not entitled to the protection of the acts.

Upon the construction of the statutes alone, the court would have concluded that a foreign author, or the assignee of a foreign author, whether such assignee was a British subject or not, had no copyright in England and no right of action on the ground of any piracy of his work committed in the British territories. Considering the statutes together with the decided cases, the court thought it doubtful whether a foreigner residing in England could have an English copyright at all; but they thought he certainly could not if he had first published his work abroad without any publication in England. In the present case, therefore, the court was of opinion, that the publication by the composer, or his assignee, of the musical composition in question, prior to its publication in England, prevented a copyright from being acquired in England. Upon this ground, a verdict taken for the plaintiff was set aside, and a rule made absolute for entering a nonsuit.

## ORIGIN & PROGRESS OF EQUITY JURISDICTION.

WE have already shown that the earliest exercise of equitable jurisdiction was by the parliament, that is to say, by the Sovereign sitting judicially in the Aula Regia or House of Lords, — the great parent tribunal, from which all the courts at Westminster have derived their autho-

<sup>1</sup> See *Miller v. Taylor*, 4 Burr. 2303; *Beckett v. Donaldson*, 4 Burr. 2408, in which Lord Bathurst, C., decreed a perpetual injunction against the defendants, which was reversed on appeal to the House of Lords, where it was established that the exclusive right of authors was limited by the act of parliament.

<sup>2</sup> *Clementi v. Walker*, 2 B. & C. 861.

<sup>3</sup> *De Londre v. Shaw*, 2 Sim. 237.

<sup>4</sup> 9 Law Jour. 227, Chan. Rep.

5 Sim. 395.

10 Sim. 329.

<sup>7</sup> 1 You. & Col. 288.

ritely by a process of gradual devolution or delegation. This is a point of cardinal importance, to be constantly remembered, not only in tracing the history of the law, but even in considering our present judicial establishment; for we might otherwise be at some loss to understand from what cause it arose, that our superior courts of justice should so long have been united by locality with the chambers of the legislature.

At the period when John Waltham, the Bishop of Salisbury, devised the equitable writ of subpœna (temp. Ric. 2) formerly adverted to, the Court of Chancery was designated the *Concilium Regis in Cancellaria*. The Chancellor, though a great officer of state, was scarcely, in those days, a judicial functionary, except in so far as that he appears to have presided in this *Concilium*,—of which the other members were his assessors or coadjutors.

Now it is pretty clear, from parliamentary records, and even from the Year Books, that although the exercise of equitable jurisdiction by the Court of Parliament itself, or by this *Concilium in Cancellaria*, in pursuance of authority from the Court of Parliament, was deemed unobjectionable; yet the exercise of that jurisdiction by the *Concilium*, or by the Chancellor, without such licence from the Court of Parliament, was regarded as a high usurpation. And this it was which occasioned the obloquy attendant on the name of Waltham, whose crafty invention of the subpœna—enabling the Chancery to act *ex proprio vigore*—had rendered him peculiarly obnoxious to the Commons, as appears by the Rolls of Parliament throughout the reigns of Ric. 2, Hen. 4, 5, and 6.

Sir Francis Palgrave is of opinion, that the opposition to the *Concilium* and to the Chancery ceased from the reign of Edward 4. And this seems very likely; although it is remarkable, that in the 8th of Edward 4 the judges held, that the remedy of a *cestui que use* against the heir of a feoffee to uses was not in Chancery, but in Parliament: which shows that, to obtain equitable relief in certain cases, the Parliament must still have been resorted to.

From the reign of Henry 6, we find that the Chancery possessed a very extensive jurisdiction,—yet principally reducible to these heads, namely, relief against the consequences of fraud, deceit, and force. Bills were filed for the perpetuation of testimony; the examination of witnesses

was taken by commission, and certified into Chancery: possession was quieted by the authority of the court;—which appears to have embraced many other cases of a similar character, which it would be tedious to enumerate. Bills then, as now, were addressed to the Chancellor or Lord Keeper. But whether he dispensed justice *solus*, or had the assistance of the other members of the ancient *Concilium*, as the Judges or Masters in Chancery,\* it is difficult to determine, till we come to the reign of Henry 8; when, under Wolsey, the authority of this great officer, sitting *alone* in his own court of equity, and its forms and proceedings, became settled and matured in the course which has ever since been continued.

## THE LUNATICS' REGULATION. ACT.

8 & 9 VICT. c. 100.

[Concluded from p. 87, *ante*.]

THE following clauses provide for the visitation of all licenced houses and hospitals by the commissioners. They appear well adapted to discover abuses and prevent their continuance.

61. That every licenced house shall, without any previous notice, be visited by two at least of the commissioners (one of whom shall be a physician or surgeon, and the other a barrister,) *four times at the least in every year, if such house be within the immediate jurisdiction of the commissioners, and if not, twice at least in every year*; and every hospital in which lunatics shall be received shall, without any previous notice, be visited by two at least of the said commissioners (one of whom shall be a physician or surgeon, and the other a barrister,) once at least in every year; and every such visit shall be made on such day or days, and at such hours of the day, and for such length of time, as the visiting commissioners shall think fit, and also at such times (if any) as the said commissioners in lunacy shall direct; and such visiting commissioners, when visiting such house or hospital, may and shall inspect every

\* The masters in chancery, as well as the common law judges, were anciently members of the *Concilium Regis*; and in this way not only sat in chancery, but in the House of Lords, that body—the *Magnum Concilium Regni*—having incorporated within it the *Concilium Regis*, or Privy Council of the Crown. This is the only way of accounting for the attendance of the judges and masters in chancery in the House of Lords in the present day.

part of such house or hospital, and every out-house, place, and building communicating with such house or hospital, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined in such house or hospital, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house or hospital since the last visit of the commissioners, and in the case of any house licensed by justices shall consider the observations made in the visitors' book for such house by the visitors appointed by the justices, and enter in the visitors' book of such house or hospital a minute of the then condition of the house or hospital, and of the patients therein, and the number of patients under restraint, with the reasons thereof, as stated, and such irregularity (if any) as may exist in any order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visiting commissioner or visitor have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise, and also, if such visit be the first after the granting a licence to the house, shall examine such licence, and, if the same be in conformity with the provisions of this act, sign the same, but if it be informal enter in such visitors' book in what respect such licence is informal: Provided also, that it shall be lawful for the Lord Chancellor, on a representation by the commissioners setting forth the expediency of such alteration, by any writing under his hand, to direct that any house licensed by justices shall (during such period as he shall therein specify, or until such his discretion shall be revoked,) be visited by the commissioners once only in the year, and also to direct that any house licensed by the commissioners, and not receiving any pauper patients therein, shall (during such period as he shall therein specify, or until such his direction shall be revoked,) be visited by the commissioners twice only in the year.

62. That every licensed house within the jurisdiction of any visitors appointed by justices, shall be visited by two at least of the said visitors (one of whom shall be a physician, surgeon, or apothecary,) four times at the least in every year, on such days, and at such hours in the day, and for such length of time as the said visitors shall think fit, and also at such other times (if any) as the justices by whom such house shall have been licensed shall direct; and such visitors when visiting any such house may and shall inspect every part of such house, and every house, outhouse, place, and building communicating therewith, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined therein, and inquire whether any patient is under restraint, and why, and inspect the order and

certificates or certificate for the reception of every patient who shall have been received into such house since the last visit of the visitors, and enter in the visitors' book a minute of the then condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visitors or visiting commissioners have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise.

63. The proprietor or superintendent of every house and hospital to show every part and every patient to the visiting commissioners and visitors.

64. Inquiries to be made by the commissioners and visitors on their several visitations.

65. Books and documents to be produced to visiting commissioners and visitors.

66. A book to be kept called "The Visitors' Book," for the result of inspection and inquiries; and a book called "The Patients' Book," for observations as to state of patients.

67. Proprietor or resident superintendent to transmit all entries by visitors and visiting commissioners to the clerk of the visitors and to the commissioners.

68. Commissioners visiting a house licensed by justices to make an entry in the patients' book as to the state of mind of any doubtful patient, and the same to be sent to the clerk of the visitors, who are thereupon to visit such patient.

69. Visiting commissioners to report on every house and hospital not within their immediate jurisdiction.

70. Power for the commissioners or any five of them to make rules.

71. Power in certain cases to visit by night.

The following clauses relate to the removal or discharge of persons in confinement:—

72. The person who signed the order for the reception of a private patient may order his discharge or removal.

73. Provision for the discharge of a private patient when the person who signed the order for his reception is incapable.

74. Mode of removal or discharge of pauper patients.

75. No patient to be removed under any of the preceding powers, if certified to be dangerous, unless the commissioners or visitors consent, or for the purpose of transfer to some other asylum.

76. Commissioners may discharge any patient confined in a house licensed by themselves.

77. Two commissioners may make special visits to discharge any patient confined in a house licensed by justices or in an hospital.

78. Similar powers for two visitors as to houses within their jurisdiction.

79. Every order for the discharge of a patient

under the last preceding powers to be signed by the persons exercising them, and be subject to certain restrictions.

80. The last preceding powers to be exercised under certain other restrictions.

Then other special powers are conferred, as follow :—

81. Preceding powers not to extend to persons found lunatic by inquisition, or confined under authority of Secretary of State.

82. Power for visitors and visiting commissioners to regulate the dietary of pauper patients.

83. Power for any visitor to give an order to the clerk of the visitors to search and give information.

84. Power for any commissioner to give an order to the secretary of the commissioners to search and give information whether any particular person is or has been within 12 months confined in any house or hospital.

85. Any one commissioner or visitor may give an order for the admission to any patient of any friend or relation, or any person named by a friend or relation.

86. Proprietor or superintendent, with consent of two commissioners or visitors, may take or send a patient to any place for his health.

87. In case of the removal of a patient, or of his escape and recapture within fourteen days, the original order for his reception to remain in force.

Powers are also given for the appointment of a private committee.

88. Commissioners to report to the Lord Chancellor periodically.

89. That the permanent chairman for the time being of the commissioners, and two other of the commissioners to be appointed by the Lord Chancellor from time to time as occasion may require (one of whom shall be a physician or surgeon, and the other a barrister), shall be a committee, to be called "The Private Committee," for the purposes hereinafter mentioned.

90. No person (except a person deriving no profit, or a committee,) to take charge of a single lunatic, except upon such order and medical certificates as aforesaid, and under certain obligations.

91. Copy of the order and certificates, &c. with respect to lunatics received into an unlicensed house to be entered in a private register.

92. Members of the private committee to visit unlicensed houses receiving a single patient, and report.

93. The Lord Chancellor on such report, and the representation of the private committee, may order a lunatic to be removed.

Authority is next given to the masters in lunacy to make inquiries regarding the lunatic's property, and appoint guardians of his person, &c.

94. That whenever the commissioners shall

have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioner shall make such inquiries relative thereto as they shall think proper, and report thereon to the Lord Chancellor.

95. The Lord Chancellor may direct the master in lunacy to report as to the lunacy of any person detained as a lunatic, and to appoint guardians of his person and estate, and direct the application of his income.

96. That such masters shall have power, in the prosecution of all inquiries and matters which may be referred to them as aforesaid, or otherwise under this act, to summon persons before them, and to administer oaths, and take evidence, either *vidæ voce* or on affidavit, and to require the production of books, papers, accounts, and documents; and that the Lord Chancellor may by any order (either general or particular) refer to the said masters any inquiries under the provisions of this act relating to the person and estate of any lunatic as to whom a report shall be made by a master as aforesaid, in like manner as inquiries relating to persons and estates of lunatics found such by inquisition are now referred to them.

97. That it shall be lawful for the Lord Chancellor from time to time to make such orders as shall to him seem fit for regulating the form and mode of proceeding before the Lord Chancellor and before the said masters, and of any other proceedings pursuant to the provisions of this act, for the due protection, care, and management of the persons and estates of lunatics as to whom such reports shall be made by the said masters as aforesaid, and also for fixing, altering, and discontinuing the fees to be received and taken in respect of such proceedings, as to the Lord Chancellor shall from time to time seem fit: Provided that all fees to be so received and taken shall be paid into the Bank of England, and placed to the credit of the Accountant-general of the Court of Chancery, to the account entitled "The Sutors Fee Fund Account."

98. That the travelling and other expenses of the said masters and their clerks shall be paid to them, by virtue of any order or orders of the Court of Chancery, out of the said fund, entitled "The Sutors Fee Fund Account," in the same manner as their expenses under the said last-mentioned act.

99. Proprietors, superintendents, and other authorised persons, may plead the order and certificates for receiving any lunatic in bar of all proceedings at law.

The following are the enactments relating to witnesses :—

100. That it shall be lawful for the commissioners, or any two of them, and also for the visitors of any licensed house, or any two of such visitors, from time to time, as they shall see occasion, to require, by summons under the common seal of the commission, if by the commissioners, and if by two only of

the commissioners or by two visitors, then under the hands and seals of such two commissioners or two visitors, as the case may be, (according to the form in Schedule (I.) annexed to this act, or as near thereto as the case will permit,) any person to appear before them to testify on oath the truth touching any matters respecting which such commissioners and visitors respectively are by this act authorised to inquire, (which oath such commissioners or visitors are hereby empowered to administer); and every person who shall not appear before such commissioners or visitors pursuant to such summons, or shall not assign some reasonable excuse for not so appearing, or shall appear and refuse to be sworn or examined, shall, on being convicted thereof before one of her Majesty's justices for the county or borough within which the place at which such person shall have been by such summons required to appear and give evidence is situate, shall for every such neglect or refusal forfeit a sum not exceeding 50l.

101. That it shall be lawful for any commissioners or visitors who shall summon any person to appear and give evidence as aforesaid, to direct the secretary of the commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expences of his appearance and attendance in pursuance of such summons, the same to be considered as expences incurred by such commissioners and visitors respectively in the execution of this act, and to be taken into account and paid accordingly.

The remaining clauses are as follow :—

102. Upon complaint made of any offence against this act, justices to require the attendance of the person charged, and adjudicate thereon. Recovery of penalties, and application thereof.

103. Form of conviction before justices.

104. Appeal to quarter sessions.

105. Actions to be commenced within six calendar months. Act may be given in evidence.

106. Offenders to be prosecuted, and penalties sued for by the secretary of the commissioners and the clerk of any visitors, and by no person without the authority of the commissioners or visitors.

107. Offenders against the provisions of any of the repealed acts may be prosecuted under this act.

108. No person to be punishable for omitting to send any copy, &c., if proved to have been put in the post, or left at the proper office.

109. Costs incurred by the commissioners to be paid by their secretary, and costs incurred by visitors by the clerk of the peace.

110. Commissioners to visit asylums and gaols.

111. Commissioners to visit workhouses.

112. Provision for the visitation of lunatics under the care of committees, and also of state and criminal lunatics, and other lunatics not comprised in the preceding provisions.

113. Power for the Lord Chancellor and Secretary of State for the Home Department to authorise a special visitation of any place where a lunatic is represented to be confined.

114. Interpretation clause. 48 G. 3, c. 96. 9 G. 4, c. 40.

115. Boroughs and counties to comprise all places therein not having separate commission of the peace.

116. Act not to extend to Bethlehem Hospital.

117. Act to be confined to England and Wales.

## MARRIAGE OF PROTESTANTS AT ROME.

IN a recent number, (p. 48, *ante*.) we inserted the evidence of Dr. Wiseman, delivered at the bar of the House of Lords, upon the question whether a marriage of two Protestants, celebrated in the papal dominions, according to the ritual of the Church of England, would be held binding at Rome. In quoting that evidence we observed, that it gave a view of the matter entirely new to English lawyers.

A correspondent, noticing that article in the following number, (p. 76, *ante*.) went the length of stating that the evidence was not only new, but "believed to be entirely wrong;" the writer adding, that "he had reason to think the Lord Chancellor considered the evidence to be erroneous;"—and advising future litigants to place no reliance upon it.

We have recently received two communications, censuring the insertion of our correspondent's letter. If the learned divine, or any of his friends, are offended at the doubt thrown upon the legal effect of his evidence, we much regret it; but we submit that neither he nor they should take offence at a discussion to which every witness is subjected, particularly in such cases, and from which the highest judges in the land are not exempt. What the learned Doctor stated as matter of *fact* is not questioned: our correspondent, we presume, only disputed the legal conclusion which was attempted to be established.

One of our correspondents observes, that "the point in dispute is one not of English but of foreign jurisprudence. Judging from the report, it certainly does not appear that the Lord Chancellor, or any of the law peers, expressed even a doubt respecting the soundness of Dr. Wiseman's evidence. It would have been irregular in them to do so, for the judges of this country profess to be conversant with no other law than their own. But even if it were true that some surprise was felt on hearing it stated that compliance with the Romish ritual was unnecessary at Rome, in the case of a marriage by Protestants, that surprise need not discompose Dr. Wiseman or his friends; they know that the doubts or astonishment of English lawyers upon points of foreign law are

not entitled to much attention, and are never intended to be the subject of a critical examination."

This much we have thought it right to say, in deference to the wishes and opinions of our several correspondents. But we cannot allow the *Legal Observer* to become the arena for any further discussion of a point which, though curious and important, has, after all, nothing to do with the principles or practice of the law of England.

## PRACTICE OF RETAINERS.

THE practice relating to retainers is in a very unsatisfactory state, occasioning frequent questions, sometimes approaching to unseemly disputes, between the clerks of counsel and the solicitors or their clerks. Some recent rules laid down by the leading counsel are calculated also to work serious prejudice to the juniors. As an illustration, we may state the following case.

A leading counsel is retained in a Chancery suit, and a motion of an ordinary kind is about to come on, in which, according to the old practice, it was usual to deliver a brief to the junior counsel only, — such junior, indeed, being generally better acquainted than the leader with the minute details of the case, and fully competent to make the application.

Within the last few years, it has been held by the leading counsel at the equity bar, that if there be any motion other than a mere "motion of course" before the court, and a brief be not delivered to the leader, his retainer is abandoned, and the opposite side is entitled to retain him, without notice to the party who gave the original retainer.

The consequence of this practice is, that, in order to avoid the forfeiture of the retainer, or the expense of a new one, a brief is delivered (although it may be quite unnecessary for the client's interests) to both senior and junior; or if the case will not warrant the expense of two briefs, then the senior is unavoidably preferred, to the prejudice of the junior.

A further ill consequence of this course of proceeding has very recently sprung up, namely, that the junior, (who frequently is of great importance in the cause,)—who has originally advised on the case, settled the bill, and knows as well the weak as the strong points of his client's claim,—may be taken from him, *without notice*, at the most critical stage of the suit. We have also heard, that the inconvenience of

the rule laid down by the leading counsel is showing itself in another new form, namely, by the junior counsel claiming to receive a brief from the solicitor who retained him whenever the case may be before the court.

For the convenient dispatch of business, and for the promotion of the due interests of the bar, it is an understood rule, that on the hearing of a cause there shall be as well a junior as a leader. In the Court of Common Pleas, at *Nisi Prius*, where a serjeant must be engaged, it is the invariable usage to have a junior. So the Vice-Chancellor of England, in *Cooke v. Turner*, (12 Sim. 649,) said he remembered perfectly that Sir Anthony Hart refused to take a brief merely because there was no junior counsel with him; and Mr. Bethell observed, that such was now the rule in causes, and no one took a brief without a junior. Lord Eldon, in the House of Lords, said, "it was of extreme importance to the public at large that there should be a successive body of gentlemen, who should understand their profession by knowing it from the beginning."

Whilst both senior and junior would have reason to complain if either were omitted at the *hearing of the cause*, we think the solicitor, acting on behalf of the suitor, should have the right to deliver a brief either to the one or the other on *interlocutory applications*; and if the bar should deem it proper to adhere to the rule, that where either counsel is left out, the opposite party is entitled to step in with a retainer or brief, — then we think all question would be settled by giving notice to the first client, as is done in cases of a general retainer. We believe that the solicitors have no wish to interfere with the rules laid down by the bar; but in carrying out those rules, they contend, as we understand, that for the clients' sake, (not their own,) notice should be sent before another brief or retainer be accepted. This seems to be just and right, and in no respect to be prejudicial to the honour or interests of the bar.

## ANNUAL CERTIFICATES OF ATTORNEYS.

In order to obtain the certificate of the Registrar of Attorneys and pay the stamp duty on the 16th December, according to the 6 & 7 Vict. c. 73, it is necessary to leave a declaration at the office of the Incorporated Law Society *six days previously*, viz., on Tuesday, the 9th December.

## DECISIONS UNDER THE SMALL DEBTS ACT.

### BRISTOL DISTRICT COURT OF BANKRUPTCY.

*Williams v. Williams.*—A judgment had been obtained in the county court for Radnorshire against the defendant, upon which he had been summoned in this court, in consequence of the present undersheriff for that county not happening to be an attorney or judge of the standing required by the Small Debts Act. The defendant not having appeared, *Hinton* moved for and obtained an order for commitment.

### STAMP ON FEOFFMENTS.

*To the Editor of the Legal Observer.*

SIR,—In your notices to correspondents on the last page of your number of the *Legal Observer* for the 22nd Nov., you state that “a feoffment, if the only instrument, is now chargeable with an additional duty commensurate with what the lease for a year stamp would have been if the conveyance had been by lease and release.” If this be so, will you have the goodness, in your next number, to point out the new enactment which imposes the lease for a year duty on a feoffment containing no letter of attorney to deliver seisin, and not charged with *ad valorem* duty, or, in the language of the Stamp Act, 55 Geo. 3, c. 184, sched. tit. Feoffment, “not otherwise charged;”—a mode of conveyance still in very frequent use here on small sales on chief rent.

The Act to Amend the Law of Real Property, passed last session, (8 & 9 Vict. c. 106, s. 2,) certainly states, that every deed which by force only of the enactment there made (viz., an enactment that corporeal hereditaments shall lie in grant as well as livery) shall be effectual as a grant, shall be chargeable with the lease for a year duty; but I am not aware of any clause in that or any other act which destroys the efficacy of livery of seisin, or charges a feoffment not otherwise charged, which operates only by way of livery, with the additional duty of the lease for a year. According to my construction of it, you may, if you please, deliver seisin and avoid the lease for a year duty; but if you dispense with the livery, and the deed, though in form a feoffment, operates only under the act as a grant, then you are liable to the lease for a year duty.

These remarks of course are not applicable to a feoffment where there is any purchase or consideration money, which is expressly charged with a duty equivalent to the lease for a year duty, under the 55 Geo. 3, c. 184.

A SUBSCRIBER.

Manchester, 25th Nov.

[We have had many letters on this subject, and in our notices of some of them, at p. 488, in our last volume, we took the same view of this question as our present correspondent; but others were not satisfied, and where so many “doctors differed,” we took the opinion of a learned contributor, and stated his view in our number for the 22nd Nov. We now return to our original opinion, and think the position taken by “A Subscriber at Manchester” is the right one. This is also in accordance with the lecture out of which the question arose.—ED.]

### REMOVAL OF POOR BILL.

*To the Editor of the Legal Observer.*

SIR,—Allow me to draw your attention, and through you that of the country attorneys generally, to the 4th sec. of a bill proposed and brought in by Messrs. Bodkin and Cripps, and ordered by the House of Commons to be printed on 8th August last, the object of which is to amend the laws relating to Orders of Removal. The 4th section, after reciting that it is expedient to alter the period for sending the statement (containing the notice and grounds of appeal) and fixing a time for such purpose, states, “that it shall be accompanied by the name and address of some attorney practising in London, and authorised to act as attorney or agent on behalf of the appellants.” Now, what on earth can a London attorney want to do with an appeal to the quarter sessions in the country, unless it be in a case where, under the act, it shall be brought before the barrister to be appointed for that purpose? Surely the above gentlemen cannot be in earnest in inserting such a clause. Would it not be quite sufficient if the attorney in the country employed in the matter, sign his name and address; and why should the overseers and guardians be obliged to employ a London attorney in any case, unless it is necessary to bring it before the barrister, and which even then must go through the country attorney to his London agent, for the overseers and guardians residing 50, 60, or 100 miles or upwards from London, cannot be competent to do it between the London attorney and themselves, and why should an attorney from London be brought all that distance at a great expense to conduct an appeal at the sessions in the country which a country attorney could do at a much less expense, being nearer at hand? Have not the poor attorneys in the country had their fees cut down enough in the shape of introducing local courts, shortening conveyancing terms, rendering assignments of outstanding terms unnecessary, and a host of other things besides, (not excepting the certificate duty,) without taking the business altogether out of the hands of the attorneys, and of appointments to offices, many of which have been taken off the poor attorney, and usurped for—



sooth henceforward by barristers. Such a state of things, in common honesty, ought not to be, and I trust it will be seen altered in that part of the section, before the bill gets one step through the house.

A YOUNG ATTORNEY AND SUBSCRIBER.  
Wellington, Salop.

## CONTINGENT REMAINDERS.

To the Editor of the Legal Observer.

SIR,—I have observed in the last volume of your journal, a query, signed A. R. S., on the 8th sec. of 8 & 9 Vict. c. 106, which does not appear to have been answered, and as it involves a point of considerable importance, I beg to trouble you with the following remarks.

On reading this section the objection seems without foundation, for I submit, that according to the true construction of the clause, only one class of contingent remainders is referred to, viz., those "existing at any time after the 31st December, 1844," these being divided by the subsequent words into, those existing after that day, but created *before* the passing of the act, and those existing after that day, but created *after* the passing of the act.

The act, therefore, is not an *ex post facto* law without limit as to time, but is limited to contingent remainders existing after the 31st December, 1844.

W. J. C.

## NOTES OF THE WEEK.

### LAW PROMOTIONS.

It was reported a few days ago that Mr. Serjeant Manning had been appointed a Commissioner in Bankruptcy, in lieu of the late Mr. Boteler; and the Serjeant's valuable report on the proposed consolidation and amendment of the Law of Bankruptcy and Insolvency gave credence to the rumour. But we now hear that Wm. Burge, Esq., the Queen's Counsel, has been appointed. Mr. Burge was called to the bar on the 20th May, 1808. He was formerly Attorney-General for Jamaica, and (according to Mr. Whishaw's Synopsis of the English Bar) is the legislative agent for that island; a Bencher of the Inner Temple, and has the titles of M.A. and D.C.L. *Hon.* The appointment will, no doubt, be satisfactory to the profession.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

MOTION TO DISMISS. — ORDERS 114 & 118 OF MAY 1845.

Under the 114th & 118th Orders of May, 1845,

any defendant may move to dismiss a bill, on the expiration of four weeks after his answer, or the last of his answers, if more than one, is found or deemed sufficient, although there are other defendants who have not answered.

THIS was a motion, under Order 114 of May 1845, to dismiss the bill for want of prosecution. It was made by a defendant, the time for excepting to whose answer had long since expired: but there was another defendant, who had not yet answered. The order directs that "any defendant may, upon notice, move the court that the bill may be dismissed, with costs, for want of prosecution, and the court may order accordingly, — if the plaintiff, having obtained an order to enlarge the time, does not obtain and serve an order for leave to amend the bill, or does not file the replication, or set down the cause to be heard on bill and answer, within four weeks after the answer, or the last of the answers, is found or deemed to be sufficient, or after the filing of a traversing note."

Mr. Beavan, for the motion, contended that the words "the last of the answers," in this order, must be taken to mean the last of the answers of the defendant who moved to dismiss; and, therefore, that he had the right to move, although the answer of another defendant was not yet put in.

Mr. Greene, contra, referred to the 118th Order, which provides, "that a defendant is not to be at liberty to move to dismiss a bill for want of prosecution, until after the expiration of the time within which a plaintiff may obtain an order to amend such bill," — omitting the words "as to such defendant," contained in the 26th Order of 1833, for which the 18th of the new orders is substituted. Now the 66th Order and the 33rd section of the 16th Order, gave the plaintiff leave to amend, where there were several defendants, at any time within four weeks after the last answer is deemed or found to be sufficient. Therefore, to make the 114th order consistent with the 118th, the words "the last of the answers" must be taken to refer to the case of there being more than one defendant: so that in the present case no motion to dismiss could be made.

Lord Langdale said, that this construction would make the right of a defendant to move to dismiss depend upon the conduct of parties over whom he had no control. He considered the 118th Order to mean only, that a defendant was not to move to dismiss the bill, while he knew that the plaintiff had a right to amend against him; and the words "as against that defendant," were not necessary to this meaning. No doubt in the 66th Order and the 33rd article of the 16th Order the expressions "last answer" meant, the last answer of several defendants; but in the 114th Order the expression "the last of the answers" related to the case of a defendant putting in more than one answer. Under the 21st Order, the court had power to give further time, if it found that

more was required to get in the answers of other defendants: and thus all the orders were made consistent. He had no doubt as to the right of the defendant to move.\*

*Dalton v. Hayter*, Nov. 3 & 30, 1845.

### Vice-Chancellor of England.

ENLARGING PUBLICATION.—CONSTRUCTION OF ORDERS 111 AND 112 OF MAY, 1845.

*Where replication was filed before the Orders of May 1845 came into operation, the court may enlarge publication, although it may have passed according to the 111th and 112th of these orders, without resorting to the old practice.*

Mr. Miller moved, that publication in this cause might be enlarged to the 1st day of next Hilary Term. Replication was filed on the 25th July last, and as the 111th and 112th Orders of May 1845, directed, that publication should pass without rule or order, on the expiration of two months after the filing of the replication, unless such time expired in the long vacation, or was enlarged by order, and if such time expired in the long vacation, then on the 2nd day of the then Michaelmas Term, publication in this cause expired on the 3rd day of Nov. instant. The Master, therefore, having no power to make an order to enlarge it, the present application became necessary.

No rules had been given.

The Vice-Chancellor made the order.

*Gilchrist v. Gilchrist*. Nov. 25th, 1845.

PAYMENT OF PURCHASE MONEY INTO COURT.

*Where the time limited by the conditions of sale for payment of purchase money has expired, the court will not, at the instance of the vendor, appoint an earlier day than that fixed by the purchaser for payment into court of such purchase money, provided the time required is not unreasonable.*

Mr. Robson moved in this case for the usual order, for the purchaser to pay the purchase money into court, on or before the 21st of Dec. next, and to be let into possession. By one of the conditions of sale under which the purchase was made, the purchaser was to pay interest at the rate of 5l. per cent. per annum on the purchase money after a certain time, which had long since expired, and under that condition he was now liable to pay such interest.

Mr. Webster asked, that the purchaser might be directed to make the payment on or before the 1st Dec., in order that the vendor might obtain the benefit of the January dividends; but

The Vice-Chancellor said, that as the time limited by the conditions of sale for payment of the purchase money had expired, after which a certain rate of interest was fixed, he could not make any variation in the order sought by the purchaser.

*Lyddon v. Woolcock*. Nov. 25, 1845.

### Queen's Bench.

(Before the Four Judges.)

PLEADING.—ISSUABLE PLEA.

*A policy of insurance contained a clause, that if disputes arose, the matter should be referred to arbitration. In an action on the policy, the defendants, being under terms to plead issuably, pleaded that the case had been submitted to arbitration, that the arbitrator had made his award, and payment into court of the sum so found due from the defendants.*

Held, *this was an issuable plea.*

THIS was an action on a policy of insurance against fire. There was a clause in the policy to the effect that if the party should insure in any other office, that fact ought to be communicated to the defendants, and that the amount of the loss should be rateably proportioned; and that in case of dispute the matter should be referred to arbitration. The defendants, being under terms to plead issuably, pleaded that the matter had been referred to arbitration, according to the terms of the policy; that the arbitrator had made his award; and payment into court of the sum which the arbitrator had found to be due to the plaintiff from the defendants. The plaintiff signed judgment for want of a plea, and a rule nisi had been obtained to set aside the judgment.

Sir F. Kelly, (Solicitor-General,) and Mr. Henderson showed cause.—The question raised for the opinion of the court is, whether this is an issuable plea. The plea does not present a single issue which will decide the merits of the case. There are two issues raised: first, the submission to arbitration, and that the arbitrator made his award; second, payment of money into court. If the plaintiff takes issue on either of those allegations, the other would stand admitted on the record. The form of the plea is calculated to embarrass the plaintiff, and is a departure from the rules of pleading. The rule of Trinity Term 1 Vict. gives a form of the plea of payment of money into court; and in the case of *Bailey v. Sweeting*,\* the Court of Exchequer held a plea bad, on special demurrer, because it did not pursue the form given. The same rule gives a form of the replication, and in conformity with that rule the plaintiff cannot reply double, by taking issue on both the allegations contained in the plea.

\* No order to dismiss was made, for other causes, which have not been noticed, as not affecting the construction of the order.

\* 12 Mee. & Wel. 616.

Mr. Martin and Mr. Crompton were not heard.

Lord Denman, C. J. — The judgment has been improperly signed. I think this is an issuable plea.

Williams, Coleridge, and Wightman, Js., concurred.

Rule absolute.

Heap v. Thorp and others, Michaelmas Term, 1845.

### Queen's Bench Practice Court.

#### AFFIDAVIT. — DEPONENT'S ADDITION.

*An affidavit sworn in London, in which the deponent was described as A. B. of, &c., "agent of the defendant in this cause," was held to contain a sufficient "addition" within the meaning of Rule I. of Hil. 2, W. 4, s. 5.*

Bovill showed cause against a rule obtained by W. R. Cole, for judgment as in case of a nonsuit, and objected in the first instance to the affidavit upon which the rule was obtained. The defendant was described therein as A. B. of &c., "agent for the defendant in this cause," and it was submitted, that this description contained no "addition" of the deponent within the meaning of Rule I. Hil. 2, W. 4, s. 5, and that the affidavit was therefore insufficient. It would not be assumed that the word "agent" meant the "London agent" for a country attorney.

W. R. Cole, contra, insisted that "agent for the defendant in the cause," is the ordinary description of the attorney in London who transacts business for the attorney in the country, and that such was the only meaning of the words in legal phraseology.

Patteson, J., said, as the affidavit was sworn in London the description was sufficient; the word "agent" as here used, evidently meant "London agent," and could not possibly be misunderstood. Had the affidavit been sworn in the country, the case would have been altogether different, for then it would have been impossible to infer what kind of agent the word referred to, business in the country being transacted, not by an "agent," but by an attorney employed by the defendant himself.

Bovill then showed cause upon an affidavit, setting forth excuses for not proceeding to trial, and the rule was discharged upon giving the usual peremptory undertaking.

Mathewson v. Baistow. Michaelmas Term, Nov. 24, 1845.

#### WRIT OF SUMMONS. — INDORSEMENT OF INTEREST.

*If in the indorsement of a writ of summons interest be specifically claimed, either the amount of interest due up to the date of writ, or the day from which it is claimed must be stated; and if the indorsement*

*merely state that the plaintiff claims debt and interest, thus—"150l. for debt and interest thereon;" the defendant may move to set aside the writ, copy, and service for irregularity.*

THE copy of the writ of summons served upon the defendant in this cause was indorsed thus:—"The plaintiff claims 150l. for debt and interest thereon, and 3l. 3s. for costs; and if the amount thereof be paid within four days from the service hereof, further proceedings will be stayed," and

Archbold now showed cause against a rule which had been obtained to set aside the writ, copy, and service for irregularity; the alleged irregularity being, that the indorsement neither stated how much the plaintiff claimed for interest, nor any day from which it might be computed. He contended, 1. That the rule asked for too much, as the second rule of Hil. 2 W. 4, does not require an indorsement of the debt on a non-bailable writ, and that therefore the objection should have been confined to the copy, or at most to the copy and service. 2. The indorsement is correct. If it were always necessary to indorse the precise amount of interest, the plaintiff would in many instances be deprived of the interest which becomes due after the commencement of the action, especially in case of a tender within the four days after service of the writ. Nor is there any good reason for requiring the statement of a day from which the interest is calculated; the defendant is as competent as the plaintiff, both to compute how much is due, and to ascertain when it began to run. In the absence of any particular statement, the interest may be presumed to be claimed from the day of serving the writ. *Pierce v. Fothergill*, 2 Bing. N. C. 167, and though in *Coppelo v. Brown*, (3 Dowl. 166; 1 C. M. & R. 575, S. C.) it was held to be sufficient to state the day from which the interest is calculated, it is not to be inferred that the court thought it necessary to do so.

Lush, contra. 1. The form of the application is correct; *Argent v. Reynolds*, 6 Dowl. 480; and if the rule of Hil. 2, W. 4, did not apply to non-bailable writs, the later rule of M. 3 W. 4, s. 5, extended it to all the writs issued under the authority of the Uniformity of Process Act, (2 & 3 W. 4, c. 39,) as well as to the copies thereof; and the Writ of Trial Act (3 & 4 W. 4, c. 42,) contemplates an indorsement upon the writ as well as on the copy. The defendant is also entitled to assume, that the writ, until produced, and shown to be different, is the same as the "copy" served upon the defendant. 2. The defect is clearly an irregularity, and it was so considered by the court, and admitted in argument in *Fitzgerald v. Evans*, 5 M. & G. 207. It is almost as important that the amount of interest, or the means of computing it, should be stated on the writ, as it is to state the amount of principal debt. In the absence of any such statement the defendant is left in uncertainty as to the rate of interest which is claimed, or whether the plaintiff claims interest for one or several

years. The amount of interest also may be very important in determining whether an action can be tried before the sheriff, for although the principal be under 20*l.* the rate of interest may be large, and swell the original debt much beyond that amount.

*Patteson, J.* — I entertain no doubt upon the question. The rule of court was made for the purpose of compelling the plaintiff to give precise information with respect to the amount of his claim, and it is no answer to the present objection to say that the defendant must be aware of how much interest is in arrear, or of the time from which it began to run, for that would equally apply to the original debt. The object of the indorsement is not to tell the defendant what he already knows, but to inform him as to the amount which the plaintiff will be contented to take. If it were compulsory upon the plaintiff to state the exact amount of interest due at the date of the writ, he might be placed under some difficulty; but that is not the case, as the rule will be satisfied by stating the day from which the plaintiff alleges that interest is in arrear, and if the action should proceed, the plaintiff will recover interest up to the day of signing judgment. The case of *Fitzgerald v. Evans* is not precisely in point, but from what fell from the court, it would seem to have been admitted in the argument, that the defect now complained of was an irregularity.

As to the form of the rule, I think that since the rule of M. 3, W. 4, s. 5, the former rule is applicable to the writ as well as to the copy, and as the writ is not produced, the defendant is entitled to assume that it is the same as the copy. This rule must therefore be made absolute.

Rule absolute for setting aside the writ, copy, and service, with costs.

*Chapman v. Becke.* Michaelmas Term, Nov. 18, 1845.

### Common Pleas.

PRACTICE IN REGISTRATION APPEALS. — TIME FOR GIVING NOTICE TO RESPONDENT OF PROSECUTING APPEAL. — WAIVER.

*In appeals from the decisions of revising barristers, a waiver by the respondent of notice of the appellant's intention to prosecute the appeal, pursuant to stat. 6 Vict. c. 18, s. 64, will not dispense with the necessity of proving such notice to have been given, before the appeal can be heard.*

An appeal from the decision of the revising barrister for South Cheshire having been called on in its turn on the 17th November, the respondents did not appear. The appellant not being prepared with an affidavit of his having given the respondents ten days' notice of his intention to prosecute the appeal, pursuant to stat. 6 Vict. c. 18, s. 64, the court allowed the case to stand over, in order that the appellant might have an opportunity of producing an affidavit of service of such notice.

*Cockburn* now applied for leave to proceed with the appeal, notwithstanding such notice had not been given. He moved upon an affidavit of the managing clerk of the London agent to the appellant's attorney, stating that on the 3rd of November the agent was instructed to enter the appeal, and was at the same time informed by his country correspondent that the attorney for the respondents had consented to waive notice of the appellant's intention to prosecute it. On the 17th November the agent wrote to the appellant's attorney, stating that no counsel had appeared for the respondents when the appeal was called on by the master, and in reply, received a letter from his correspondent, dated November 19, in which the attorney for the appellant mentioned that he had written to the attorney for the respondents, expressing at the same time his surprise that no counsel had been instructed to appear, as it had been fully understood between them that counsel would appear on the respondents' behalf. The learned counsel submitted, that as the respondents had consented to waive the notice, the court might now proceed to hear the appeal.

*Tindal, C. J.* — The question is, whether we are not bound by the stringent words of this act of parliament. The 64th section enacts, that "no appeal shall be heard by the court in any case where the respondent shall not appear, unless the appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal." It seems to me, therefore, that we have no power to dispense with an affidavit of such notice having been given, although the respondents have waived it. Still, as the proviso which follows these words in the section enables the court to postpone the hearing of the appeal, "if it shall appear to them that there has not been reasonable time to give or send such notice;" and as it appears that the appellant has been lulled into security by the conduct of the respondents, I think the appeal may, under the circumstances, stand over till the next term. That delay will give the appellant ample time to serve the respondents with notice of his intention to prosecute the appeal.

Appeal to stand over accordingly.

*Newton*, appellant, and the *Overseers of Mobberley*, respondents.

M. T., Nov. 20, 1845.

### Exchequer of Pleas.

CA. SA. — INSOLVENT.

*No action of trespass for false imprisonment will lie against a plaintiff who, without notice, takes a defendant in execution for a debt, in respect of which he has been discharged under the Insolvent Act.*

*But if the plaintiff issues a ca. sa. maliciously, and for the purpose of oppression, he is liable to an action on the case.*

TRESPASS for false imprisonment. Plea:

that the now defendant had obtained judgment against the plaintiff for a certain debt, whereupon he issued a *ca. sa.*, under which the now plaintiff was taken in execution, which is the trespass complained of.

Replication: that after the judgment was obtained and before the issuing of the writ of *ca. sa.*, the plaintiff was discharged from the said judgment debt, by the court for the relief of insolvent debtors in Ireland.

Demurrer and joinder.

*E. V. Williams* in support of the demurrer. The action is not maintainable. As it does not appear from the replication that the defendant had any notice of the plaintiff's discharge under the Insolvent Act, the defendant was justified in issuing a *ca. sa.* If, indeed, he had knowingly abused the process of the court for the purpose of oppression, he might be liable to an action on the case, but under no circumstances will trespass lie. (He was then stopped by the court.)

*Martin*, contra. The 81st and 82nd sections of the Irish Insolvent Act, (3 & 4 Vict. c. 107,) are the same in terms as the 90th and 91st sections of the English Insolvent Act, (1 & 2 Vict. c. 110). The 81st section of the 3 & 4 Vict. c. 107, enacts, that no person who shall have become entitled to the benefit of that act shall be imprisoned for any debt or sum of money or costs with respect to which such person shall have become so entitled, or by reason of any judgment, decree, or order for judgment of the same, but that upon every arrest or detainer in person for any such debt, &c. it shall be lawful for any judge of the court out of which any writ or process shall have issued to relieve such prisoner from custody. The 82nd section enacts, that after any person shall have become entitled to the benefit of that act "no writ of *capias ad satisfaciendum*, *feri facias*, or other writ or execution against the body, goods, or chattels of such prisoner shall issue, on any judgment obtained against such prisoner for any debt or sum of money, with respect to which such person shall have become so entitled." As the statute contains an absolute prohibition against issuing a *ca. sa.*, the writ is void, and the defendant cannot justify under it. *Parson v. Lloyd*, 3 Wils. 351. In *Barker v. Braham*, 3 Wils. 268, it was decided, that an action for false imprisonment would lie against an attorney (as well as against his client) who sues out at the suit of the client an illegal writ of *ca. sa.*, and imprisons the defendant thereon. [*Parke, B., Tarlton v. Fisher*, 2 Dong. 671, decided, that a sheriff is not liable to an action for false imprisonment for arresting a certificated bankrupt, a peer, or discharged insolvent.] Those were cases of privilege, but here the writ has been issued in defiance of an act of parliament, and the defendant is in the same situation as if he had imprisoned the plaintiff without any writ.

*Pollock, C. B.* There must be judgment for the defendant. The question is, whether the language of the English or Irish Insolvent Act,

entitles the plaintiff to maintain an action of trespass. There is no doubt that an exemption from arrest will not entitle the party arrested to maintain such action. That was clearly established by the case of *Tarlton v. Fisher*. Subsequently various parties became exempted from arrest, either by force of the bankrupt law or other statutes, even so far back as the stat. 5 Geo. 2, c. 52. The language of that act is not so strong as the more modern statutes, but it has always been held, that a bankrupt or insolvent must avail himself of his exemption by application to the court. In *Parsons v. Lloyd*, the writ was absolutely void from some matter appearing on the face of it, and which was known to the party issuing the writ. It seems to me to make no difference, that the statute prohibits the issuing of the writ. It would be productive of great inconvenience and mischief if we were to hold, that a party was liable for issuing a writ under circumstances which gave him no notice that he was not entitled to issue it. If it were so, he would be liable in trespass, because without notice, he availed himself of a judgment after the defendant had become bankrupt or insolvent. In thus deciding, we cause no hardship, for it is clearly laid down, that if a party knowingly, and in order to oppress maliciously sues out a writ, he will be liable in an action of *case*.

*Parke, B.* The question is, whether the legislature, in prohibiting the issuing of the writ, intended, that it should be absolutely void, or merely voidable. If the 82nd section be read together with the 83rd, the meaning is clearly this, that the person arrested is entitled to his discharge without satisfying the judgment. Perhaps the act is not correctly worded, but when it is said that no writ of *ca. sa.* shall issue, it means that the plaintiff *ought not* to issue such writ. If we were to put another construction on the act, it would lead to great hardship, inasmuch as a plaintiff would be liable to an action of trespass, although he might not know of the defendant's discharge.

*Alderson, B.* The question is, whether the words "no writ of *ca. sa.* shall issue," are to be taken as meaning that the writ, if issued, shall be void. If we were to hold it void it would include all the cases in which the plaintiff meant to dispute the validity of the discharge, and even where he had succeeded. Such a construction would lead to an absurdity. The meaning of the act is, that if the plaintiff shall issue a writ, the defendant shall be discharged by the course of law, that is, by application to a judge. Taking both sections together, that is the reasonable construction.

*Rolfe, B.*, concurred.

Judgment for defendant.

*Ewart v. Jones.* Exchequer, Michaelmas Term, Nov. 17, 1845.

**CHANCERY SITTINGS.**  
*After Michaelmas Term, 1843.*  
AT LINCOLN'S INN.

**Lord Chancellor.**

Tuesday . . .	Dec. 4	{ The 1st Seal—Appeal Motions.
Friday . . . . .	5	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . . .	6	{ Appeals.
Monday . . . . .	8	{ Appeals.
Tuesday . . . . .	9	{ Appeals.
Wednesday . . . . .	10	{ The 2nd Seal—Appeal Motions.
Thursday . . . . .	11	{ Appeals.
Friday . . . . .	12	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . . .	13	{ Appeals.
Monday . . . . .	15	{ The 3rd Seal—Appeal Motions.
Tuesday . . . . .	16	{ Appeals.
Wednesday . . . . .	17	{ Appeals.
Thursday . . . . .	18	{ Appeals.
Friday . . . . .	19	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . . .	20	{ The 4th Seal—Appeal Motions.
Monday . . . . .	22	{ The General Petition-day.

**Master of the Rolls.**  
(See p. 98, ante.)

**Vice-Chancellor of England.**

Thursday . . .	Dec. 4	{ The 1st Seal—Motions.
Friday . . . . .	5	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday . . . . .	6	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday . . . . .	8	{ Dirs.
Tuesday . . . . .	9	{ Dirs.
Wednesday . . . . .	10	{ The 2nd Seal—Motions.
Thursday . . . . .	11	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . . .	12	{ (Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday . . . . .	13	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday . . . . .	15	{ The 3rd Seal—Motions.
Tuesday . . . . .	16	{ Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Wednesday . . . . .	17	{ Causes, and Fur. Directions.
Thursday . . . . .	18	{ Causes.
Friday . . . . .	19	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday . . . . .	20	{ The 4th Seal—Motions.
Monday . . . . .	22	{ The General Petition-day.

**Vice-Chancellor Knight Bruce.**

Tuesday . . .	Dec. 2	{ Bankrupt Petitions.
Thursday . . . . .	4	{ The 1st Seal—Motions.

Friday . . . . .	5	{ (Petition-day) Petitions and Causes.
Saturday . . . . .	6	{ Short Causes and Causes.
Monday . . . . .	8	{ Bankrupt Petitions and Causes.
Tuesday . . . . .	9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	10	{ The 2nd Seal—Motions.
Thursday . . . . .	11	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . .	12	{ (Petition-day) Petitions and Causes.
Saturday . . . . .	13	{ Short Causes and Causes.
Monday . . . . .	15	{ The 3rd Seal—Motions.
Tuesday . . . . .	16	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Wednesday . . . . .	17	{ Bankrupt Petitions and Causes.
Thursday . . . . .	18	{ Bankrupt Petitions, Pleas, Demrs., Exons., Causes, and Further Directions.
Friday . . . . .	19	{ (Petition-day) Petitions and Causes.
Saturday . . . . .	20	{ The 4th Seal—Motions and Causes.
Monday . . . . .	22	{ (General Petition-day) Petitions and Bankrupt Petitions.

**Vice-Chancellor Stigam.**

Thursday . . .	Dec. 4	{ The 1st Seal—Motions and Causes.
Friday . . . . .	5	{ (Petition-day) Pleas, Demrs. Exons, Causes, and Further Directions.
Saturday . . . . .	6	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . . .	8	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Directions.
Tuesday . . . . .	9	{ Directions.
Wednesday . . . . .	10	{ The 2nd Seal—Motions and Petitions.
Thursday . . . . .	11	{ Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Friday . . . . .	12	{ (Petition-day) Pleas, Demurs., Exons, Causes, and Fur. Dirs.
Saturday . . . . .	13	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . . .	15	{ The 3rd Seal—Motions and Causes.
Tuesday . . . . .	16	{ Pleas, Demurrers, Exons., Further Directions, and Causes.
Wednesday . . . . .	17	{ Causes.
Thursday . . . . .	18	{ Causes.
Friday . . . . .	19	{ (Petition-day) Ditto.
Saturday . . . . .	20	{ The 4th Seal—Motions, Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . . .	22	{ (The General Petition-day) Petitions and Causes.

## CHANCERY CAUSE LISTS.

Sittings after Michaelmas Term, 1845.

## Lord Chancellor.

## APPEALS.

Day to be fixed	{ Strickland Ditto Ditto }	{ Strickland Boynton Strickland }	appeal
Abated Millar	Craig	do.	pt. hd.
Forbes	Peacock	do.	pt. hd.
Tylee	Hinton		appeal
Miln	Walton		do.
Vandeleur	Blagrove		do.
Abated Crosley	Derby Gas Co.		do.
Parker	Bult		do.
Ladbrooke	Smith		do.
S. O. Hitch	Leworthy		do.
Ccore	Lowndes		do.
Minor	Minor	3 appeals	
Drake	Drake		appeal
Dalton	Hayter		do.
Baggett	Meux		do.
Payne	Banner		do.
Dobson	Lyall		do.
Moorat	Richardson		do.
Millbank	Collier	do. want of parties	
Deeks	Stanhope	3 appeals	
Willshire	Rabbitt		appeal
Archer	Hudson		do.
Turner	Newport		do.
Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol. }		appeal
Trulock	Robey		appeal
Youngusband	Giaborne		do.
Courtney	Williams		do.
Whitworth	Gangain		do.
Bush	Shipman		do.
Black	Chaytor		do.
{ Mitford	Reynolds	exons. by order	
{ Johnson	Ditto	fur. dirs. by order	
Thwaites	Foreman		appeal
Watts	Lord Eglinton		do.
Curson	Belworthy		do.
Watson	Parker		do.
Dietrichson	Cabburn		do.
Bellamy	Sabine		do.
Attorney-Gen.	Malkin	cause by order	
Johnson	Child		appeal
Kidd	North		do.
Dord	Wightwick		do.
Carmichael	Carmichael		do.
Hawkes	Howell		do.
Heming	Swinnerton		do.
Trail	Bull		do.
Youde	Jones		do.
Wrightson	Macaulay		do.

## Vice-Chancellor of England.

## PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Jossaume v. Abbott, dem.  
 Fell v. Gibson, dem.  
 Bryan v. Twigg, Blackwell v. Carr, fur. dirs. and petition.  
 Grace v. Waldron, Grace v. Webb, by order.

Grand Junction Canal Co. v. Dimes, at request of deft.

Wilson v. Williams.  
 Nicholson v. Wilson, Pinder v. Wilson, fur. dirs. pt. hd.

Atkinson v. Jones, Atkinson v. Manley.  
 Friswell v. King, fur. dirs. and costs and petn.  
 Gaches v. Warner, Gaches v. Pilkington.

Lake v. Tucker.  
 Mayor, &c. of Louth v. Warden, &c., of Louth Free School.

Champion v. Champion.  
 Bownan v. Bell, fur. dirs. and petition.  
 Hill v. Hanson, exons.

Sanders v. Sanders, cause and fur. dirs.  
 Godkin v. Macdonald.

Jones v. Francis.  
 Langton v. Cozens, Langton v. Leaver.  
 Gregson v. Hindley.

Roberts v. Thomas, otherwise James.  
 Mayo v. Roake.

Ware v. Rowland.  
 Richards v. Perkins, Richards v. Stokes, Richards v. Myles, fur. dirs. and costs.

Attorney-Gen. v. Earl of Devon.

Beale v. Boot, fur. dirs. and costs.  
 Davis v. Chanter, 3 causes, Same v. Best advd. by order.

Heern v. Way.  
 Hazlewood v. Partridge, fur. dirs. and petn.

Jones v. Jones, 4 causes.

Harris v. Davison.

Parker v. Goude.  
 Beckwith v. Hawkins, Copeland v. Hawkins, fur. dirs. and costs.

Johnson v. Forrester, fur. dirs. & costs.  
 Ross v. Blink.

Jones v. Dyer, fur. dirs. and costs.

Henderson v. Eason, exons.

Searle v. Law, fur. dirs. and costs.

Ferrabee v. Lewis, fur. dirs. and costs.

Harcourt v. M'Cabe.

Booth v. Cheswick, exons.

Allibone v. Jones.

Howell v. Reeves.

Smith v. Sherwood.

Legh v. Legh, fur. dirs. and costs.

Newport v. Lomas, 5 causes, exons. and ditto.

5th Dec. Jackson v. Hunt, fur. dirs. and costs.

Parnell v. Hand, fur. dirs. and costs.

Smith v. Plummer.

Attorney-Gen. v. Wright.

Terry v. Wachter.

Borridale v. Swann.

Scott v. Swann.

5th Dec. Henshaw v. Sedbell.

Rogers v. Rogers, fur. dirs. and costs.

Horne v. Billam.

Simpson v. Holt, fur. dirs. and costs.

Thompson v. Michele.

Garrod v. Moor.

Larkin v. Sandle, fur. dirs. and costs.

Lovett v. Mqs. of Bath.

5th Dec. Ingle v. Neale, 5 causes, fur. dirs.

Smale v. Beckford.

Peacock v. Kernot.

Morrison v. Watkins.

Patten v. Pelpoe.

Scaife v. Stewart, fur. dirs. and costs.

Wright v. Barnewell, exons. and fur. dirs.

Greenway v. Buchanan.

5th Dec. Charlton v. Robson.

Walton v. Morrutt.

Beddingfield v. Christian, fur. dirs. and costs.

Ring v. Roberts, fur. dirs. and costs.

Parker v. Hawkes, exons.  
5th Dec. Jolliffe v. Prince.  
5th Dec. Jones v. Jones, fur. dirs. and costs.  
Davison v. Bagley.  
Aldred v. Adam, fur. dirs. and costs.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Boyd v. Moyle, dem.  
Hobson v. Everett, Hobson v. Ferraby.  
Adams v. Barry, pt. hd.  
Knight v. Jenkins.  
Owen v. Griffith.  
Phillips v. Hunt.  
Christie v. Hodges.  
Roose v. Vaux.  
S. O. Sutherland v. Cooke, Same v. Jackson, fur. dirs. and costs.  
6th Dec. Skidmore v. Carey.  
Price v. Scales.  
Turner v. Frampton.  
Harrop v. Ward.  
Hulkes v. Hulkes.  
Duke v. Barnett.  
6th Dec. Rhoades v. De Beauvoir, Same v. Mat-son.  
Middleton v. Poole.  
Garside v. Edwards.  
Hadfield v. Ditto.  
Dobson v. Austen.  
6th Dec. Cooper v. Aylmore.  
Pierce v. Franks.  
6th Dec. Bond v. Lakin.  
Christie v. Hodges.  
Early v. Benbow.  
Goodwin v. Goswell.  
Lloyd v. Waring.  
Pattison v. Pattison.

Vice-Chancellor Stirling.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Corling v. Flight, dem.  
When suppl. bill set down. Adie v. Walford, Wal-ford v. Adie.  
To apply to L. C. Atkinson v. Boyes.  
Wood v. Freeman.  
Sibley v. Sibley.  
Francis v. Grover, fur. dirs. part hd.  
Buller v. Lyne.  
Willinck v. Bentinck.  
Gregson v. Booth.  
Griffiths v. Matthews, fur. dirs. and costs.  
Blay v. Skipworth, ditto.  
Attorney-Gen. v. Flint ditto.  
Deere v. Robinson.  
Kynaston v. Knowles, at request of deft.  
Stagg v. Knowles, ditto.  
Dyke v. Knowles, ditto.  
Edwards v. Abrey.  
Williams v. Foulkes, fur. dirs. and costs.  
Knapp v. Gibbs, ditto.  
Mansey v. Moss, exons.  
Evans v. Evans.  
Finn v. Insall, Ladler v. Insall.  
6th Dec. Collier v. Mills, fur. dirs. and costs.  
Goodridge v. Honeywill, Goodridge v. Black-stone.  
Coope v. Carter.  
Paternoster v. Paternoster.

Jones v. Rose.  
Ward v. Bassett, Ward v. Hearne, Ward v. Ben-son.  
Thornhill v. Dyer, exons.  
6th Dec. Urch v. Rooke.

BANKRUPTS.

From 21st Oct. to Nov. 22nd, 1845, both inclusive, with dates when gazetted.

(Concluded from p. 100, ante.)

Meredith, Evan, Liverpool, Linen Draper. Morgan, Off. Ass.; Vincent & Co., Temple; Bardswell & Co., Liverpool. Nov. 4 and 7.  
Miller, Thomas, Mansell Street, Goodman's Fields, Oil and Colour Man. Green, Off. Ass.; Henderson, Mansell Street. Nov. 11.  
Newburn, John, Oxtow, Woodchurch, Chester, Joiner. Casenove, Off. Ass.; Wilkin, Furnival's Inn. Nov. 14.  
Norman, Charles, Cumberland Mews, Edgeware Road, Coach Builder. Johnson, Off. Ass.; Mardon & Co., Christchurch Buildings, New-gate Street. Nov. 7.  
Oxton, Thomas, Liverpool, Cart Owner. Morgan, Off. Ass.; Johnson & Co., Temple; Grocott, Liverpool. Oct. 31.  
Parfitt, William, Bristol, Engineer and Beer House-keeper. Kynaston, Off. Ass.; Church, Essex Street, Strand; Cruttwell, Bath. Oct. 21.  
Parr, John, 16, South Wharf Road, Paddington, Coal Dealer. Groom, Off. Ass.; Maples & Co., 6, Frederick's Place, Old Jewry. Nov. 21.  
Parsons, William Richard, 7, Limehouse Causeway, Baker. Johnson, Off. Ass.; Spiller, Camomile Street. Nov. 11.  
Pearson, Ralph, Chorley, Lancaster, Grocer. Hobson, Off. Ass.; Sutton, 16, Princess Street, Manchester; Hulton, Bolton-le-Moors. Nov. 4 and 7.  
Pratt, George, and John Bodle, Addison Road North, and Queen's Road, Notting-hill, Build-ers. Graham, Off. Ass.; Leigh, George Street, Mansion House. Nov. 21.  
Price, Hugh Pugh, Holywell, Flint, Linen Draper. Hobson, Off. Ass.; Abbott, Charlotte Street, Bedford Square; Atkinson & Co., Manchester. Nov. 18.  
Purnell, Benjamin, late of Rupert Street, White-chapel, Dealer in Vinegar. Groom, Off. Ass.; Henderson, 28, Mansell Street, Goodman's Fields. Nov. 18.  
Ramsden, James, and James Ramsden, jun., Arm-ley, Leeds, Cloth Manufacturers. Pearna, Off. Ass.; Walker, Furnival's Inn; Barber, Bright-house; Blackburn, Leeds. Oct. 31.  
Rawathorne, John, Manchester, General Agent and Manufacturer. Pott, Off. Ass.; Lever, King's Road, Bedford Row; Ackers, 13, Cross Street, Manchester. Oct. 21.  
Reding, James, and William Nicol Judd, Horse-shoe Court, Ludgate Hill, Printers. Whitmore, Off. Ass.; Goddard & Co., 101, Wood Street, Cheapside. Oct. 31.  
Rhodes, Samuel, Brsd Road, York, Worsted Spinner, &c. Young, Off. Ass.; Wigglenworth, & Co., Gray's Inn; Smith, Leeds. Nov. 4 and 7.



- Robbins, Chauncey, and William Smith Martin, Birmingham, Wine Merchants. *Vulpy*, Off. Ass.; *Matteram & Co.*, Bennett's Hill, Birmingham. Nov. 18.
- Sawyer, George, Lewes, Tailor. *Edwards*, Off. Ass.; *Wool, & Co.*, Dean Street, Soho. Nov. 21.
- Sculthorp, John, Brick Hill Lane, Upper Thames Street, Colourman. *Johnson*, Off. Ass.; *Robinson*, Queen Street Place, Southwark Bridge. Nov. 18.
- Senior, William, Sheffield, Hosier. *Hops*, Off. Ass.; *Atkinson & Co.*, Church Court, Lothbury; *Watson*, Sheffield; *Cronhelm*, Leeds. Oct. 21.
- Simpson, Thomas, Stourbridge, Worcester, Livery Stablekeeper. *Bittleton*, Off. Ass.; *Hunt & Co.*, Stourbridge; *Matteram & Co.*, Bennett's Hill, Birmingham. Nov. 18.
- Sheldrake, William Henry, Ipswich, Boot and Shoe Maker. *Johnson*, Off. Ass.; *Shearman & Co.*, Gray's Inn. Oct. 31.
- Smith, David, late of Venallt Iron and Coal Works, Neath, Ironmaster, now of King's Swinford, Stafford. *Acraman*, Off. Ass.; *Davies*, Merthyr Tydvil. Oct. 21.
- Smith, Sophia, Garboldisham, Norfolk, Grocer and Draper. *Bell*, Off. Ass.; *Torkington*, New Bridge Street, Blackfriars. Oct. 28.
- Smith, John, Brownlow Hill, Liverpool, Licensed Victualler. *Casenove*, Off. Ass.; *Nethersole*, New Inn, Strand; *Owen & Co.*, Liverpool. Oct. 31.
- Smith, John, 3, Crescent, Jewin Street, Cripplegate, Hardwareman. *Green*, Off. Ass.; *Smith*, Wilmington Square. Nov. 14.
- Spiller, Edward, 36, Berners Street, Oxford Street, Grocer. *Turquand*, Off. Ass.; *Wire & Co.*, St. Swithin's Lane. Nov. 4.
- Spofford, John, High Street, Chatham, Kent, Linen Draper, &c. *Edwards*, Off. Ass.; *Sharp*, 2 Devonshire Terrace, High Street, Marylebone. Nov. 4.
- Standen, Thomas, Pudding Lane, Maidstone, Brewer. *Follett*, Off. Ass. *Bauer & Co.*, Chancery Lane; *Hart*, Maidstone. Nov. 14.
- Stocker, Samuel, sen., 9, Seckford Street, Clerkenwell, Hydraulic Engineer. *Turquand*, Off. Ass.; *Robinson*, Ironmonger Lane. Nov. 11.
- Straight, George, 9, Skinner Street, Snow Hill, Cutter and Worker in Ivory. *Green*, Off. Ass.; *Barber*, Furnival's Inn. Nov. 4.
- Summers, James, Cambridge, Cabinet Maker. *Follett*, Off. Ass.; *Bradley*, Leman Street, Goodman's Fields; *King*, Cambridge. Oct. 28.
- Sykes, James, Doncaster, York, Hosier. *Freeman*, Off. Ass.; Messrs. *Rushworth*, Staple's Inn; *Sunderston*, Leeds. Oct. 24.
- Taylor, William Harris, formerly of Shot Tower, Lambeth, now of 186, Piccadilly, Stave Manufacturer and Dealer in Timber. *Graham*, Off. Ass.; *Foster*, Jermyn Street, St. James's. Oct. 21.
- Thomas, John, Upper Maudlin Street, Bristol Mason. *Miller*, Off. Ass.; *Daniel & Co.*, Bristol. Oct. 31.
- Trigwell, John Joseph, Harrow Road, Middlesex, Beer Shop Keeper, Builder. *Green*, Off. Ass.; *Cross*, 28, Surrey Street, Strand. Oct. 21.
- Tune, Henry, 102, Blackfriars Road, Surrey, Boot and Shoe Maker. *Bell*, Off. Ass.; *Bickley*, Barge Yard, Bucklersbury. Oct. 28.
- Turner, Edward, 48, Princes Street, Soho, Chemist. *Bell*, Off. Ass.; *Buchanan*, Basinghall Street. Nov. 4.
- Vaughan, Thomas Barnes, formerly of Liverpool, now of Polton-cum-Spittal, Chester, Farmer. *Casenove*, Off. Ass.; *Norris & Co.*, Bartlett's Buildings; *Norris*, Liverpool. Nov. 4.
- Vickers, William, late of 12, Moorgate Street, Bill Broker. *Bell*, Off. Ass.; *Rodgers*, King Street, Cheapside. Nov. 18.
- Von Daudelszen, George Michael, 23, Mincing Lane, Merchant. *Green*, Off. Ass.; *Lawrance & Co.*, 32, Bucklersbury. Oct. 28.
- Wade, Benjamin, 111, Strand, Tailor. *Green*, Off. Ass.; *Lloyd*, Milk Street, Cheapside. Nov. 18.
- Walker, William Josiah, 304, Oxford Street, Boot and Shoe Maker. *Johnson*, Off. Ass.; *Turner*, Mount Street, Whitechapel Road. Oct. 31.
- Ward, William, Belton, Rutland, Farmer. *Green*, Off. Ass.; *Clarke & Co.*, 20, Lincoln's Inn Fields. Nov. 11.
- Warr, Richard, Beamister, Dorset, Auctioneer, Builder. *Hernaman*, Off. Ass.; *Peerson*, Essex Street; *Cox*, Beamister; *Bishop & Co.*, Exeter. Oct. 28.
- Watson, George Hasings, New Bond Street, Tobaccoconist. *Bell*, Off. Ass.; *Blake*, Blackfriars Road. Nov. 11.
- White, Charles Henry, Gravesend, Linen Draper. *Edwards*, Off. Ass.; *Brisley*, 4, Pancras Lane; *Sales & Co.*, Aldermanbury. Nov. 11.
- Whitaway, John, Chudleigh, Devon, Miller. *Hirtzel*, Off. Ass.; *Stogdon*, Exeter; *Keddell & Co.*, Lime Street. Nov. 4.
- Wilkinson, Thomas, 77, Quadrant, Ironmonger. *Follett*, Off. Ass.; *Dod & Co.*, Great Marlborough Street. Nov. 18.
- Worley, Robert, 29, Newgate Street, Commission Salesman. *Graham*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Nov. 21.
- Wright, John, Brinscall Hall, within Wheelton, Lancaster, Calico Printer. *Fraser*, Off. Ass.; *Milne & Co.*, Temple; *Goulden*, Savings' Bank Buildings, King Street, Manchester. Nov. 4 and 7.
- Wynn, Edward William, 48, Gower Street, Bedford Square, Bronze and Ormolu Manufacturer. *Graham*, Off. Ass.; *Shirreff*, Lincoln's Inn Fields. Oct. 21.

## THE EDITOR'S LETTER BOX.

WE have now closed the *Analytical Digest of Cases* in its present form, as a separate publication, — the 4th part for the present year having been published last week. Its future incorporation with the *Legal Observer* will be an advantage to all except the few persons who subscribed to the Digest only, and it will render the main work still more peculiarly useful to our readers. The first portion of the New Digest will appear as early in January as the materials will permit.

The boundary between the two branches of the profession will, we think, prevent G. T. from adopting the course he proposes. The continuance of anything in the nature even of a quasi clerkship to an attorney whilst he is studying for the bar, (although such attorney be a relation,) would be deemed objectionable. It is not a question of the length of time devoted as a student for the bar.

# The Legal Observer.

SATURDAY, DECEMBER 13, 1845.

———"Quod magis ad nos  
Pertinet, et noscere malum est, agitamus."

HORAT.

## STATE OF JUDICIAL BUSINESS IN THE HOUSE OF LORDS.

IN a former number (*ante*, p. 21) we gave our readers a summary of the business remaining for argument and decision in the courts of law and equity at Westminster on the first day of Michaelmas Term, as compared with the amount of arrears which existed in those courts some years ago. We are now enabled to give a similar comparative statement of appeals and writs of error in the Court of Last Resort; and regret that the result of this comparison is not so favourable as the former. It appears, then, that at the close of the last session there were pending 116 causes, — including those from Scotland and Ireland. Of these, 9 have been in a state of abatement for some years, and are not likely to be revived; while 7 are causes in which (although they are not withdrawn) parties have settled their differences. The remaining 100 we take to be effective causes: 57 of these are appeals from the Court of Session in Scotland; 7 (4 appeals and 3 writs of error) are from Ireland; and the remaining 36 are English, — 28 of them being appeals, and 8 writs of error. Four causes out of the 100 stand over for judgment, (having been fully heard last session,) and 2, or 3, were part heard only, when it appeared that they were cases requiring the assistance of the learned judges of the common law, and were consequently postponed. About 30 more were ripe, and

set down for hearing before the end of last session.

This is the present state of judicial business in the House of Lords, as far as we can ascertain it from cause lists and entries in last year's minutes. We are enabled to compare it with that of former years, by referring to a table in the 10th vol. of Clark & Finnelly's Reports, (p. 12,) which is there stated to have been drawn up from official returns, beginning in 1823, made by order of the House. By that table it appears, that in the session of 1824, 66 causes were heard, — 142 remaining over for hearing; and in 1825, 92 causes were heard, and 77 remained for hearing. It may be remembered, that during those years Lord Gifford, having been appointed Deputy-Speaker, gave notable assistance in reducing the then large arrear of causes; and that after his death, Lord Wynford, Sir William Alexander, and Sir John Leach were successively appointed Deputy-Speakers for the same purpose. We find, accordingly, that in 1830 the arrear was reduced to 56. It, however, again mounted up; until, in 1835, the House, by sitting to hear causes for 80 days, cleared off the accumulation to the extent of leaving but 38 causes for hearing and 5 standing over for judgment.

From the period to which we are now referring, the arrear of causes, notwithstanding every effort to keep it down, has gone on steadily and uniformly increasing, and is likely to continue swelling, — not from any want of diligence or exertion in the tribunal itself, for it sits

during the session almost constantly four days in the week, and six hours each day, to dispose of causes and other judicial matters,—but from the pressure of business, occasioned in some degree by its very popularity and acceptability with litigants;—the Court of Last Resort being now presided over by judges distinguished as well by the greatness of their capacity, as by the length and varied range of their professional experience. It is some consolation for the evils of litigation, that when conducted before judges of eminence, the public derives benefit by the removal of doubts which would otherwise continue to agitate and perplex the practitioners of the law.

### ASSIGNMENT OF SATISFIED TERMS ACT.

#### MR. CAYLEY SHADWELL'S LECTURES.

MR. SHADWELL resumed, on the 24th November, the subject of the act, 8 & 9 Vict. c. 112, to render the assignment of satisfied terms unnecessary; and observed, that among the alterations that the new act, when it comes into operation after the 31st instant, will produce in the law and practice of conveyancing, was that of abolishing the practice of using, on a purchase of land, an assignment of an attendant term as a means of preventing the claim of the wife of the vendor to her *dower* out of the land sold.

This practice was perhaps not now so usually resorted to as formerly: 1st. Because it was only in the case of women married before the 1st of January, 1834, the date of the commencement of the operation of the Dower Act, that any claim to dower on the part of the wife of a vendor, out of the lands sold and conveyed by her husband, could by possibility arise. 2ndly. Because in most cases where it was necessary to consider the right of the vendor's wife, the present method of binding the estate of a married woman by her acknowledgment of the deed, was sufficiently convenient to prevent the necessity of looking out for any other way of getting rid of her claim. There were cases, however, in which it was very convenient, not to say indispensable, to resort to this method of preventing the claim of the vendor's wife to dower by means of an assignment to a trustee for the purchaser of a satisfied term. The wife might be incapable or unwilling to consent:—she might be an infant under the age of 21 years, or a lunatic, or living abroad, or as was unfortunately but too frequently the case, separated from her husband and not upon good terms with him. In

any of these cases, if there was a good legal attendant term subsisting, to make an assignment of it to a trustee for the purchaser would be the best,—in some of them almost the only practicable method of getting rid of this claim of the vendor's wife.

In many cases, too, where to save expense was the great object, this method of getting rid of dower by assignment of the term might prove to be the cheapest. The expense of procuring the acknowledgment of a deed by a married woman, though little compared with the old expense of a fine, was still something, and would not unfrequently prove greater than that of taking an assignment of the term.

If the term had been recently assigned, and the trustee were known, and willing to concur without putting the parties to extra expense,—a case which must be a pretty common one,—there, by putting the assignment of the term in the same deed with the conveyance of the fee, and attending to brevity, it was easy to put an end to the claim of dower without making any perceptible addition to the expense of the transaction. This method, therefore, of preventing the claim to dower by means of a term, though not so much in use as formerly, was yet by no means to be considered as out of use; and it was to be regretted that the framers of the act had not regarded the consequences of putting an end to this old, well understood, and sometimes very convenient method of getting rid of the claim to dower, and had not, in constructing their new machinery, provided anything to take the place of the old machinery that they had destroyed.

In some cases the old way of proceeding by the assignment of the term would be cheaper than the only way which the new act had left, that of procuring the acknowledgment of the deed. The desire of saving expense appeared to have been and indeed was stated in the preamble itself to have been one of the main causes that induced the legislature to pass the act, although it was to be feared that in such cases as those which had been put, the tendency of the act would be rather to increase than to diminish the expenses. But the more serious objection to the change was, that it would in some cases impede instead of facilitating the transfer of landed property, and might by possibility amount to an interference with vested rights.

As things then stood, if there were an attendant term subsisting in the estate, a husband who wished to sell could do so without consulting his wife, and by the means of the term could make a conveyance to a purchaser, which the purchaser was compellable to accept, without her concurrence;—a mode of dealing with his estate which, to a husband whose wife was under age, or a lunatic, or upon bad terms with him, might be of the greatest value. The difficulty of infancy in a wife, to be sure, time would remedy; lunacy, too, might be got over, supposing a commission of lunacy had been taken out, but only, by the way, by application to the Court of Chancery and procuring the consent

of the committee; and in either case recourse might be had, supposing the estate would bear it, to a private act of parliament. A reference, however, to those remedies was anything but a satisfactory answer to the objection, particularly when they remembered that they were dealing with an act whose express object was, to prevent difficulty, delay, and expense. At any rate, those remedies did not, nor did any other that he could think of, touch the case of the husband who was upon bad terms with his wife. Under the old law, if there was a term, he could sell without consulting her. If there was no term, there was nothing for it but to make a bargain with her and procure her consent; for it was not open to him to get over the difficulty by applying either to the Court of Chancery or to parliament. The distinction in this case between a term and no term, might be a very fantastic one, like many of the other distinctions to which the doctrine of attendant terms applied, and it might be very proper to put an end to that distinction for the future. But did the legislature intend to interfere with vested rights? Did they mean that a husband who then had the power of selling without consulting his wife, should be deprived of that right? To judge of the intention from what had been done, that certainly was their meaning; for such would be the operation of the act. Perhaps the answer to this objection of interfering with vested rights would be, that in estates of any consequence dower was not a claim that was often allowed to operate; that estates were usually conveyed to uses to bar dower; and that the wife's claim was almost always prevented by a settlement. But settlements, if usual, were not universal; and any how, it was inconvenient to put forward the settlement as the means of proving the purchaser's estate to be free from the dower of the vendor's wife, for that was to make the vendor's settlement which remained in his possession, one of the muniments of the purchaser's title. At any rate, settlements almost belonged exclusively to the property of the rich. In estates of three or four hundred pounds' value, they seldom heard of them, and dower, in these small estates, was usually allowed to attach; and yet the saving of expense being one of the main avowed objects of the act, its operation on small properties must have been prominently before the consideration of the legislature. To put in the strongest light the inconvenience that might by possibility arise from destroying this mode of barring dower, the case might be taken of a married man, who had quarrelled with his wife, contracting to sell his estate, which was subject to her dower, and the purchaser filing a bill for specific performance. According to the doctrines of the courts of equity, (the anomalies of which in this particular Lord Eldon was often in the habit of adverting to, see *Ves. 10, p. 236*), a man who has contracted to sell property in which his wife is interested, if he cannot make her consent, is liable to be sent to prison for his failure. This liability, in the case put, he

might escape, if there were a valid attendant term to assign; the act, therefore, which takes away the power of assigning the term, might have the effect of consigning the unfortunate husband to a prison, which, had it not been passed, he might have avoided.

To consider satisfactorily the operation of the new act on the mode of barring the claim of a vendor's wife to dower by assigning an attendant term to a trustee for the purchaser, the lecturer briefly stated some few points of doctrine of courts of equity on that subject as it then stood.

The operation of an assignment of term to a trustee for a purchaser upon the claim of the vendor's wife to dower, was peculiar. With regard to all other charges and incumbrances, judgments, annuities, settlements, mortgages, and such like, a term assigned to a trustee for a purchaser, protected that purchaser only against those of which he had not had notice, either express or implied, at the time of his paying the purchase money. Notice previous to payment was fatal to any attempt on the part of a purchaser to protect himself by means of the term he had taken an assignment of, against any of the incumbrances upon his estate, excepting only the claim to dower. As to dower, it was held that an assignment to a trustee for a purchaser of a good legal term, prior in point of date to the marriage of the wife claiming the dower, was a valid protection to that purchaser against the claim to dower, whether he had notice of the dower or not.

It had often been said by judges in chancery, that this distinction as to the effect of notice between dower and other incumbrances, was arbitrary and irrational; but the protection allowed to be given by an assignment of term against a claim of dower, notice or no notice, was said to stand on the inveterate practice of conveyancers. It was said that it always had been the way, in a purchase, to make an assignment of one of these terms, as a protection to a purchaser against the claim to dower of the vendor's wife, without any reference to the question of notice; and whether the way was right or wrong, it was then too late to alter it.

This was one of the peculiarities of the law of assignment of a term upon trust to bar dower.

The other was, that to have this effect on a purchase of barring the vendor's wife of her dower, it was necessary that there should be either an actual assignment of the term, or an express declaration by the trustee of the term in favour of the purchaser, or what was said to be sufficient, that the deed creating the term should be handed over to the purchaser. It was not enough that there should be a satisfied attendant term in existence, although it were true that by construction of law the term was held in trust for the purchaser; for if unassigned, it was considered to be held in trust for him only as one of the parties beneficially

interested, and that as the doweress was one of the parties beneficially interested as well as the purchaser, the term was held in trust for her as much as for him. Neither was it enough that there should be (as there not unfrequently was) a general declaration in the conveyance deed, that all terms subsisting in the land should be held in trust for the purchaser. A general declaration of that kind to which the trustee holding the term was not a party, was not considered sufficient to displace the right of the doweress.

To give the purchaser the benefit of the term as against the doweress, it was necessary either that there should be an actual assignment of the term to a new trustee of the purchaser's own choosing, upon trust for the purchaser and his heirs, and to assign as he and they should direct, and in the mean time upon trust to attend the inheritance and protect the same from mesne charges and incumbrances, if such there were; or else that there should be an actual declaration by deed, executed by the old trustee of the term, that he would thenceforth hold the term upon trusts for the purchaser and his heirs, similar to those which had been stated, which declaration would have the effect of turning the old trustee of the term, who had formerly been a trustee for all parties beneficially interested alike, into a trustee for the purchaser, and the purchaser only.

These were the points that were decided in *Maundrell v. Maundrell*, 7 Ves. jun. 567, S.C., 10 Ves. 246. On the whole subject of how the title of a doweress was affected by a term of years prior in point of date to her own marriage, both in the case of its being in a mortgagee unsatisfied, and also in the case of its being satisfied and attendant in a trustee, and how her rights prevail over the rights of the heir, the devisee, and over the purchaser who had not taken an assignment of the term, and succumb only to the rights of the purchaser who has taken an assignment of the term, or an express declaration from the trustee for his own benefit; see *Hill v. Adams*, 2 Atk. 209, S. C., under name of *Swancock v. Lifford*, 6 Ambler; *Lady Radnor v. Vanderbendy*, Show. Parl. Cas. 6; *Banks v. Sutton*, 2 P. Wms. 700; a long and exceedingly able note to Co. Litt. 208 (a) note 1, where these and many other cases were cited and commented on; *Willoughby v. Willoughby*, 1 Term. Rep. 763; *Roper on Husband and Wife*, 1st edit. vol. 1, p. 523 to 529; Sugden's V. & P. 10th edit. vol. 3, p. 47 & 48.

This being the state of the law as it then stood with regard to an assignment of terms in trust for a purchaser and to bar dower,—how would it be affected by the new act? The lecturer considered, 1st, its effect on a transaction completed under the old law.

On a purchase, a term had been assigned to a trustee for the purpose, amongst others, of barring the claim to dower of the vendor's

wife. Would a term so situate during the life of the vendor's wife be considered as a *satisfied* term within the meaning of the act? When the question arose, if the question did arise before the act was altered, there would be, doubtless, difference of opinion upon it. According to the reasoning that he (Mr. Shadwell) followed on the other question arising on these words of the act, a term in that situation would not be a satisfied term within its meaning. According to the best attention that he had been enabled to give to the subject, a satisfied term by "express declaration attendant upon the inheritance or reversion of any lands," (which were the words of the act,) meant a term which has been assigned upon trust for the owner of the whole of the inheritance and his heirs, and to assign as he and they should direct, and in the mean time to protect him and them from mesne charges and incumbrances, if any such there were.

It was indeed denied that the words extended even so far as that. It was said that the trust to assign as the purchaser or his heirs should direct was a particular trust distinct from that of attending upon the inheritance, and that while that trust to assign as the purchaser should direct continued, it could not be said that it was a satisfied term, for there was a trust distinct from that of attending the inheritance, which trust was unsatisfied. This sort of reasoning, however, appeared to the lecturer only quibbling upon the words, and would not be countenanced by a court. The words upon trust to assign as the purchaser or his heirs should direct, were to be found in every assignment of an attendant term: therefore, to say that those words were to prevent a term from being considered as satisfied, was in fact to reduce the act to silence and to hinder it from having any operation at all.

Where, however, there was not only a trust to attend the inheritance, but also some other real and substantial trust beyond that, there it did appear to him that this other real and substantial, and not merely formal trust, would prevent an assigned attendant term from being considered a satisfied term within the meaning of the act. A term assigned upon trust for better securing mortgage money and interest, also in part secured by a conveyance of the fee simple of even date and subject thereto, upon trust to attend the inheritance; — a term assigned upon trust to protect the uses and trusts of a settlement and subject thereto, upon trust to attend; — were not, in his opinion, either of them *satisfied* terms within the meaning of the act. There was a trust to attend the inheritance, but there was also something more; and that something more prevented the term from being satisfied. If this reasoning were correct as to mortgages and settlements, it would lead to the conclusion that also in the case that they had been considering, of a term assigned upon a purchase, upon a trust, whether expressed or implied, to bar the dower of the wife of a vendor, and to attend the inheritance, — there also the term could not be considered as satis-

and within the act. There was something more than the mere trust to attend, and therefore it escaped the act.

The lecturer admitted this point to be very doubtful, but he felt himself bound to give his opinion on it to the best of his ability. He then adverted to the professional authors who had treated of this and the accompanying acts, namely,—

“The Real Property Acts of 1845, by Edward Vansittart Neale;” “Concise Precedents in Conveyancing, adapted to the act to amend the law of Real Property, by Charles Davidson, 2nd edit.,” and Statutes relating to Conveyancing of the Session 8 & 9 Vict., with a Commentary and Form, by Geo. Sweet. Mr. Davidson only, as far as he (Mr. Shadwell) had had an opportunity of examining these works, had made any attempt at the definition of the words “satisfied term.” Mr. Davidson said, the expression “satisfied term” was an expression in common use, and was generally understood to mean a term, the trusts, purposes, or objects of which had been performed or fulfilled or had become incapable of taking effect. Thus a term limited in trust to raise a sum of money is satisfied when the money is raised, a mortgage term is satisfied when the mortgage money is paid off; a term to raise portions is satisfied either when the portions are raised or when it has become certain that there can be no persons entitled, and so on, but (he adds) it is probable that cases will occur in which there must be a doubt whether a term is or is not a satisfied term.

The lecturer understood Mr. Davidson here to mean, that a term of which the primary and original trusts had been performed, was a satisfied term within the meaning of the act, notwithstanding any other trusts which might have been subsequently declared upon it. For the reasons above given the lecturer could not agree with Mr. Davidson, whose observations upon the act, however, were very valuable and extremely well worth reading, particularly as it appeared from them that he himself was the original suggester of the act, though in common with the rest of the profession, he expressed his regret that so little time was allowed for deliberation before the statute was enacted.

It was the lecturer’s opinion then, that a term upon trust the better to secure a mortgage not being within the act, must, while the mortgage existed, be assigned in the old way upon every transfer of the mortgage securities; and so of the term upon trust to bar dower, that it upon every future sale, as long as the doweress lived, must also be assigned as usual. So much for past transactions as to terms upon trust to bar dower.

But in a future transaction, would a vendor wishing to sell without the concurrence of his wife be enabled where there might have been a term in a trustee for him, be enabled to avail himself of that part of the 1st clause which says, “That every such term of years which shall be

so attendant as aforesaid by express declaration although hereby made to cease and determine, shall afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim and demand, as it would have afforded to him if it had continued to subsist, but had not been assigned or dealt with after the 31st Dec. 1845, and shall for the purpose of such protection be considered in every court of law and of equity to be a subsisting term.”

The lecturer apprehended it to be clear, that a purchaser according to the old law to protect himself against the dower of the wife of the vendor, must either procure an assignment of the term, or an express declaration of trust in his favour, or have the deed creating the term handed over to him; while the act provided, that this benefit of the extinguished term, whatever it might be, should only be such as might have been had if the term had not been assigned and not been dealt with, which benefit, according to the old law, would to a purchaser trying to protect himself against a claim of dower have been none at all, and which therefore under the new law must, he apprehended, be considered to be, also none at all. The only doubt he thought could be as to the third method, that of handing over the deed creating the term to the purchaser. But this method he inclined to think, though not “an assignment of,” must be held to be a “dealing with” the term, and therefore liable to the same reasoning as the method of assignment or of declaration of trust.

## POINTS IN COMMON LAW.

### UNSTAMPED BILL OF EXCHANGE, WHEN RECEIVABLE IN EVIDENCE.

THE stamp laws bear so directly and extensively upon all the transactions of trade and commerce, and the operation of those laws, as regards the reception or exclusion of evidence, so often works individual hardship and injustice, that it is in some degree matter of congratulation, when the stringent enactments introduced into statutes of this description, are judicially declared capable of a construction which promotes instead of obstructing the purposes of justice.

The stat. 31 Geo. 3, c. 25, s. 29, (which has been incorporated with the subsequent stamp acts,) provides, “that no bill of exchange liable to the duties imposed, shall be pleaded, &c., or given in evidence in any court, or admitted in any court to be good, useful, or available in law or equity,” unless duly stamped. Under this provision, it has been repeatedly held at *nisi prius*, that a bill of exchange not properly stamped could not be received in evidence

at all, that the jury should not see it nor judge look at it, unless for the purpose of determining whether or not it was properly stamped, and so receivable in evidence.\*

In the case of *Sweeting v. Halse*,<sup>b</sup> where Lord Tenterden presiding at *nisi prius*, submitted to the view of the jury an unstamped instrument to assist them in determining, whether it had been cancelled with the consent of the drawer, the Court of Queen's Bench held, that the jury ought not to have been permitted to draw a conclusion of fact from the unstamped instrument; and in *Jardine v. Payne*,<sup>c</sup> it was held, that an unstamped bill could not be given in evidence for the purpose of showing by an indorsement on it, that the plaintiff was the person alluded to in a letter written by the defendant. To prevent the ends of justice from being defeated, however, certain exceptions to the rule have been allowed in cases of felony,<sup>d</sup> bribery,<sup>e</sup> usury,<sup>f</sup> and fraud.<sup>g</sup>

By a late case in the Court of Common Pleas,<sup>h</sup> the class of exceptions has been further enlarged, that court being of opinion, upon a consideration of the language of the statute, that an insufficiently stamped bill of exchange was admissible in evidence, where the party producing it did not seek to enforce it, but to show that it was wholly worthless, unproductive, and unavailable.

The action in this case was for money lent, and the plaintiff, by his particulars, (after giving credit for a payment of 500*l.*) claimed 500*l.* as the balance of the debt with interest at 5*l.* per cent.; and the defendant pleaded never indebted and payment. In order to prove his case, the plaintiff put in evidence a document in the defendant's hand-writing, showing an admission of a balance of 500*l.* and interest, but the fair inference from that document if unexplained was, that this balance had been paid by a bill at four months' date for 533*l.* 6*s.* 8*d.* In order to show that this inference was not well founded, and that the statement respecting the bill in the memorandum in the plaintiff's hand-writing was false in fact, the plaintiff's counsel proposed to put in evidence the instrument referred to in the memorandum as a bill, but being improp-

perly stamped, it was objected to by the defendant's counsel, and rejected by Cresswell, J., (who presided at the trial), chiefly upon the authority of *Sweeting v. Halse*, already cited. In the absence of the evidence which the production of the unstamped bill would have supplied, the jury found for the defendant, on the plea of payment.

The case afterwards came before the court upon an application for a new trial, upon the ground that the unstamped bill had been improperly rejected, and upon a critical examination of the statute, and a consideration of the cases above referred to, the court (including the learned judge who tried the cause) came to the conclusion, that in the position in which the cause stood when the bill was tendered, and taking into consideration the purpose for which it was offered, the plaintiff ought to have been allowed to give in evidence this insufficiently stamped bill of exchange. The judgment proceeded on the ground, that the statutory prohibition in its direct terms, applies only where an unstamped bill is given in evidence as a "good, useful, or available" bill; whereas the bill in question was tendered by the plaintiff to show that it was a mere piece of waste paper. One of the learned judges<sup>i</sup> referred to the judgment of *Alderson, B.*, in *Williams v. Gerry*,<sup>k</sup> as recognizing the interpretation now put upon the statute by this court, and is reported to have said:—"Under the circumstances of the case nothing could be more unjust than to exclude the bill in question; and I should be most unwilling, therefore, to put such a construction on the statute as would have that effect, unless the words of its enactments were so stringent as to lead to no other conclusion."

#### ADMISSIBILITY OF BANKRUPT TO PROVE FACTS CONNECTED WITH HIS BANKRUPTCY.

A FORMER number,<sup>l</sup> contained a reference to a case decided in the Court of Exchequer, in respect to the admission of a *prochein amy* as a witness, under Lord Denman's Act,<sup>m</sup> (6 & 7 Vict. c. 85.) There has been a subsequent decision upon the construction of the act in the same court, as to the admissibility of a bankrupt as a witness,<sup>n</sup> which although not as satisfactory or conclusive as could be wished, appears, nevertheless, to be fraught with very important consequences.

The rule established by a current of authorities prior to the passing of Lord

\* See the judgment of Lord Abinger, C. B., in *Burton v. Cornish*, 12 M. & W. 426.

<sup>b</sup> 9 B. & C. 365; 4 M. & Ry. 237.

<sup>c</sup> 1 B. & Ad. 663.

<sup>d</sup> *R. v. Haweshead*, 1 Leach, C. C. 292; 2 East, P. C. 955; *R. v. Pooley*, 3 B. & P. 511.

<sup>e</sup> *Dovor v. Mestaer*, 5 East, N. P. 92; *Copstock v. Bower*, 4 M. & W. 361.

<sup>f</sup> *Nash v. Duncomb*, 1 Moo. & Ry. 104.

<sup>g</sup> *Gregory v. Fraser*, 3 Camp. 454.

<sup>h</sup> *Smart v. Nokes*, 6 Man. & G. 911.

<sup>i</sup> The late Mr. Justice Erskine.

<sup>k</sup> 10 Mees. & W. 296; 2 Dowl. N. S. 301.

<sup>l</sup> 30 L. O. p. 453.

<sup>m</sup> *Sinclair v. Sinclair*, 13 Mees. & W. 640; 14 Law J. 609, Exc.

<sup>n</sup> *Wall and other, assignees of James, a bankrupt v. Walton and others*, 14 Law J. 262.

<sup>o</sup> *Chapman v. Gardner*, 2 Blac. 279, n.; *Field*

Denman's Act, was, that a bankrupt could not be admitted to prove any of the facts necessary to support the commission. The rule appears to be founded on the consideration, that a bankrupt was interested to support the commission, inasmuch as if the commission could not be supported, the bankrupt would be again liable in respect of debts from which his certificate would in effect release him. The principle of these decisions was somewhat broken in upon, by the statutory provisions made in relief of honest debtors believing themselves to be insolvent, and enacting, that the filing of a declaration of insolvency was to be deemed an act of bankruptcy, provided a fiat issued against the trader within a limited time after the filing of such declaration.<sup>P</sup> But it remains to be decided, whether under Lord Denman's Act, which removes the incompetency of a witness on the ground of interest in all cases, but those specially excepted, a bankrupt can be called upon to prove the act of bankruptcy on which the fiat against him issues.

In *Udal v. Walton*, the point as to the bankrupt's admissibility as a witness to prove the act of bankruptcy, did not directly arise. The case came before the *Lord Chief Baron*, at the last Gloucester Spring Assizes, upon an interpleader issue, to determine whether certain goods which had belonged to the bankrupt Innes, were the property of the plaintiffs as his assignees, at the time they were seized by the defendants as execution creditors. In support of their case, the plaintiffs called the bankrupt Innes, to prove the petitioning creditor's debt, and it was objected, that he was not a competent witness for this purpose, and was not rendered competent by the act 6 & 7 Vict. c. 85. The learned judge, however, received the evidence, and upon an application subsequently to the court, Barons *Alderson*, *Rolfe*, and *Platt*, concurred with the *Lord Chief Baron* in thinking, that the evidence was properly received. The *Lord Chief Baron*, however, grounded his judgment on the fact, that the bankrupt's testimony was tendered not to support the commission, but to prove the petitioning creditor's debt, and that for this purpose it was only necessary to decide that a bankrupt was a competent witness to prove collateral facts. *Alderson*, B., was of opinion, that it was competent for the bankrupt to prove even the act of bankruptcy. The court was unanimously of opinion that the bankrupt was properly admitted to prove the petitioning creditor's debt.

If this decision be supported, as we pre-

sume it must be, on principle, it is difficult to understand why a bankrupt should not be called upon and be admitted to prove, the trading, as well as, the act of bankruptcy, which *Alderson*, B., thought he was competent to prove, and the petitioning creditors debt, which the whole court expressly decided he was properly admitted to prove. The fiat is founded upon the petitioning creditor's debt, no less than upon the act of bankruptcy, and it is not very clear in what sense the proof of the petitioning creditor's debt can be described as a collateral fact.

The rules of evidence established in the courts of common law, are those which prevail before the commissioners of bankrupt, in respect of the examination of witnesses, and it may be well deserving of consideration, whether upon the principles already adverted to, the evidence of the bankrupt himself may not now be sufficient to establish all that is necessary to warrant the issue of the fiat, and to support it when it issues. In the numerous cases in which the adjudication is not opposed, and the bankrupt is a consenting party to the proceeding, if his evidence should be deemed sufficient, and other witnesses could be dispensed with, great expense and inconvenience would be prevented, without any necessary detriment to the interests of creditors.

## SALES BY AUCTION.

### PUFFING.

A SALE by auction ought to be conducted with all imaginable fairness. Accordingly, the too common artifice of having fictitious bidders, vulgarly called puffers, to run up the price without limit or restriction against *bond fide* offerers, has been reprobated as fraudulent by four of the greatest judges of modern times, — by Lord Mansfield, in *Bozwell v. Christie*, Cowp. 395; by Lord Kenyon, in *Howard v. Castles*, 6 T. R. 642; by Sir William Grant, in *Smith v. Clarke*, 12 Ves. 477; and by Lord Tenterden, in *Wheeler v. Collier*, Mood. & Mal. 123. To the same effect are the opinions of Chief Baron Alexander, in *Rez v. Marsh*, 3 You. & Jer. 331; and of the Court of Common Pleas, in *Crowder v. Austin*, 3 Bing. 368.

In opposition to this formidable array of authority, the case usually cited is that of *Connolly v. Parsons*, 3 Ves. 625, n., decided by Lord Chancellor Loughborough,

*v. Curtis*, 2 Str. 829; *Hoffman v. Pitt*, 5 Esp. 22.

<sup>P</sup> 6 Geo. 4, c. 16, s. 6, and 5 & 6 Vict. c. 122, s. 22.



who held that "the acts of parliament go on its being a usual and a fair thing for the owner to bid;" adding, that "he could not compass the reasoning, that a person does not follow his own judgment, because others bid,"—an observation plausible, indeed, and specious, but contradicted by all experience, — as is evident from the circumstance that the whole generation of puffers owe their existence and prosperity to the fact, which is notorious, that these respectable persons are found to answer the end of their vocation.

The question then is, how far is the vendor entitled to proceed in this respect. Is he at liberty to do anything more than simply to protect the property from being sold at an undervalue? We apprehend he is not; all beyond this being repugnant to the fair dealing essential to the contract of sale, and peculiarly indispensable in sales by auction.

The true rule is derivable from the case of *Smith v. Clarke*, already cited, where Sir William Grant with characteristic discrimination points out the distinction between what is fraudulent and what is fair and permissible in matters of this description. The facts of the case, as stated by the great judge himself, were as follow :—

The plaintiffs are the assignees under a commission of bankrupt. They appear to have set a value upon the estates which were the property of the bankrupt; and, resolving to sell them by auction, they employ a person to attend the sale and to bid up to a price specified against each lot, as the very lowest price at which the premises ought to be sold. And according to the statement of one of the witnesses, they directed the bidder to be cautious not to go beyond the limits prescribed, as if he should, and if the lot should be knocked down to him, he must take it.

Therefore, they did not employ him for the purpose generally of enhancing the price, but merely to prevent a sale at an undervalue; and they stated previously what they conceived to be the true value, below which the lots ought not to be sold.

We must therefore draw the line, which it is very easy to do in all cases, between the contrivance which has delusion for its object, and the protective operation which simply seeks to prevent a sale at an undervalue. This latter privilege the vendor may always exercise, — but he must so exercise it as not to injure others. He must use it as a shield, not as a sword.

These remarks are suggested by a case, *Thornett v. Haines*, reported, apparently with great care and accuracy, in the *Times* news-

paper of the 5th instant. It was an action to recover 315*l.*, being the deposit upon a purchase, at Garraway's, of certain wine-vaults in Shore-ditch. When the purchaser was subsequently applied to for the purpose of completing his purchase, he demurred, on the ground that the bidding prior to his own at the auction had been fictitious, and without previous notice being given of it to those present at the sale. On behalf of the defendant, it was contended by Mr. *Humfrey*, that since the passing of the act repealing the duty upon auctions, the necessity of communicating the names of persons employed to prevent property exposed for sale by auction from being knocked down at too low a price, was unnecessary. This argument we conceive is wholly inapplicable. The notice required before the passing of the act to which Mr. *Humfrey* referred was merely for the purpose of saving the auction duty, in case of the property being knocked down to the individual bidding as agent for the vendor. In such a case the 28 Geo. 3, c. 27, s. 20, required notice to be given in writing to the auctioneer, before the bidding, of the intention to buy in the estate on the vendor's behalf, so that the duty might not be chargeable on what, after all, would be no sale at all. But this evidently had nothing in the world to do with the question, how far such a device was consistent with what was due, in point of honour and fair dealing, to the competitors at an auction. The act repealing the auction duty, the 8 Vict. c. 15, would be a very noxious enactment, if it were held that *puffing* was to have new facilities and encouragement under the auspices of that well-intentioned statute.

The observations of the Lord Chief Baron in his charge to the jury, place the matter in what we humbly conceive to be the true light. He said, there could be no doubt that, with a view to protect property from being sold at a ruinous sacrifice, the vendor had a right to employ persons to bid for or to buy it in, up to a certain sum; but then in that case he was bound to make the fact known. In the present instance, he was of opinion that there ought to be a verdict for the plaintiff, with liberty to the defendant to move to enter a nonsuit. In this way the question would come before the full court, and be at once set at rest.

Mr. *Humfrey*. — Then supposing the court should be of opinion that there had not been such an interference with the ordinary course of a sale by auction as to render the sale null, the plaintiff would be nonsuited. He thought that the sale had been conducted like all others, and that, as a matter of necessity\* almost, the

\* This argument reminds us of the French thief, who defended himself by saying, "I must live." The judge answered, "I do not see the necessity of that," and ordered him to be executed forthwith. The necessity of having puffers is on a level with the necessity of having pickpockets. We know they exist; but, as we cannot always be on our guard against their

plaintiff must have known that there would be "puffers." It was the usual custom.

The Lord Chief Baron was inclined to think that there ought to have been a special notice of the fact given. The jury then, under the direction of the court, gave a verdict for the plaintiff,—the defendant to have liberty to move to enter a nonsuit.

## REPORT ON CRIMINAL LAW.

HAVING already noticed several parts of this important Report, we proceed now to the observations of the Commissioners on the practice of framing *several counts* in an indictment. Our readers will here find a very valuable dissertation on the principles of pleading. The object of several counts is the avoiding *variances* from the evidence, by repeating the description of the transaction in different modes:—

The necessity for this arises from the condition imposed of stating particulars which cannot be known with certainty, and which frequently cannot be proved upon the trial, and, in some instances also, is referable to the uncertain state of the law as applicable to the particular transaction. The inconvenience arising from exacting so great a degree of particularity has been partially palliated by an act<sup>a</sup> allowing amendments to be made in the indictment, in order to adapt it to the evidence given. It appears to us that the principle and expediency of these remedies, or rather palliations, is very doubtful, and that the more simple and efficacious remedy would consist in permitting such a generality of description as would, with a moderate degree of attention, avoid the danger of variance, which is necessarily incident to a minute and formal detail of particulars.

The practice of multiplying counts is not only troublesome and expensive, but even inconsistent with a finding of the charge on oath, each count professing to be founded on a distinct transaction, although the evidence shows but one. The alteration of facts in a charge found on the oath of a grand jury, and then making that to appear as having been found which has not been so found, is also objectionable as being inconsistent with truth, and a departure *pro tanto* from principle.

We proceed to make a few observations on the inconvenience which has resulted from the practice of multiplying counts. The charge presented by a grand jury, in their mere statement on oath, is to be drawn by the officer of the Crown, but is more usually, in cases of difficulty, drawn by a skilful pleader. The legal practice of including several different charges

in the same indictment, gave rise to the admission of several charges apparently distinct, but in reality founded on the same transaction; and the practice, although, perhaps, not strictly warranted by the ancient and simple principles of criminal law, or quite consonant with the duty of jurors, was sanctioned, no doubt, for the sake of its utility in excluding failures from variance in proof. The pleader, in making the most skilful use of his materials, with a view to conviction, has two main objects to attend to, the law which governs the case, and the facts which are to be alleged. Supposing the law to be clear, he endeavours to satisfy it, at the least possible expense, in the allegation of facts necessary to show a violation of the law. The less he alleges, the less danger is there of variance; he has therefore one or more counts, exceedingly sparing in allegation; but in order to avoid the danger of too strict an economy, other counts contain more liberal statements, oftentimes at the risk of inability to prove them. But, again, it often happens that there may be a doubt as to some material fact, in which case also, for the avoiding of variance, it may be necessary to state it in various modes. Counts then are multiplied, even when the law is clear, for the sake of avoiding any variance in fact. But the law itself may be uncertain; counts then are advisable—adapted to the simplest possible hypothesis in point of law, so as not to risk the necessity of having to prove too much; but this hypothesis may be erroneous, and therefore counts are also advisable to meet one, or more than one, of greater complexity. The course not unfrequently adopted by the pleader, to meet such difficulties in a complicated case, is this,—to frame one count containing all the facts which can possibly be material, another exceedingly general and economical in the statement of facts; these being accomplished, intermediate counts are framed, varying as to the extent and manner of allegations, so as to suit the objects to which we have adverted. Such being the artificial manner in which, as we know from experience, indictments are constructed, it may sometimes be a matter of difficulty at an assizes or sessions to determine on which counts the verdict ought to be entered when such verdict is generally given. The criminal courts in which the judges of the superior courts have presided have lately adopted the precaution of passing a distinct sentence on each several count of the indictment, but so as not, in reality, to subject the party convicted to more than one penalty for the same actual offence. By this means, the danger of a total reversal of the judgment upon a writ of error, in case any count turned out to be insufficient, is avoided.

One inconvenience may (we make the observation with great deference) arise from the adoption of this course,—that bad counts may possibly derive from it the sanction of legal judgment; further, that the practice encourages the insertion of a multiplicity of counts, and still leaves it doubtful on which the prosecutor

malpractices, we try to put them down,—so little do we consider them matters of necessity.

<sup>a</sup> 9 Geo. 4, c. 16.

really means to rely. There cannot, we apprehend, be any great difficulty in selecting the count on which the verdict might most safely be entered, when the verdict warrants such a selection. The exertion of that ingenuity which has suggested many counts, for the sake of avoiding the variance from fact or deficiency in fact, can no longer be necessary when the power of selection is given by the verdict; and although the artist be not present who has skilfully provided against numerous contingencies, his opinion may be acted upon when the matter has been reduced to certainty.

When a verdict has been given, on which, of course, all facts stand proved or disproved, no apprehension on the score of variance in proof any longer exists; the only question, as regards selection, is, which of the established counts is safest in point of law. That can seldom be doubtful, for of two established counts, that which is most copious in fact must usually be best adapted to sustain the charge in point of law. If all the facts contained in such count be essential, the others which omit any of those facts must be bad in law, and though some of the facts in such count be superfluous, they do no harm.

Whilst the allowing a mere general statement of an offence would greatly diminish the danger of variance in fact, and the more certain definition of offences would obviate the risk of failure from uncertainty as regards the law, we believe that the necessity for multiplying counts would be greatly diminished, if not altogether superseded, and therefore, that in case no objection should be allowable after verdict, except for want of legal certainty, there would be no difficulty in at once entering the verdict on a single count.

In conclusion of these observations, it may, we think, admit of doubt whether it be quite consistent with the character of the law for certainty, that so many sentences should be passed in respect of one and the same offence as agree with the number of counts which the special pleader has chosen to insert in the indictment, and that this should be done upon the ground that it does not appear which of them really charges such an offence as warrants the judgment. An indictment not unfrequently contains as many as a dozen counts, charging the facts of the same transaction differently. The passing twelve different sentences leaves it wholly uncertain for which of the twelve offences the defendant is really punishable, and the practice strongly indicates that the law is uncertain. A degree of laxity in the administration of criminal justice is thus sanctioned, which, to say the least, is not creditable to justice, and which tends much to increase an existing evil, by rendering laws already indefinite still more indefinite.

Whilst inconvenience results from having recourse to a multiplicity of counts for the purpose of avoiding an apprehended variance, nothing is gained from them with a view to

real certainty. Mere formal particularity, not requiring any proof, is but an useless affectation of certainty; if proof be required, the multiplying formal and circumstantial descriptions does not make the charge in reality at all more certain, either in law or fact, than a single charge would have been, framed in terms sufficiently general to embrace all the variations of the charge. Though each distinct charge may appear to be more certain and precise, the accusation which the party is called upon to meet is not more certain. If, for instance, upon a charge founded on one transaction of taking a watch, an indictment contained three counts, one alleging a stealing of the watch of A., another alleging it to be the watch of B., and another stating it to be the property of C., the prisoner would only know that he was charged with stealing a watch, which it was proposed to prove to be the property either of A., or B., or C., and he would derive precisely the same information if the indictment contained but one charge of the taking of the watch, being the property of A., or B., or C. It is plain that the objection to alternative allegations, viz., that the charge is uncertain, is not at all removed by substituting alternative counts for alternative allegations in the same count.

The objection to amendments is still greater. —If the substituted allegation be one which might have been included within some general allegation, no advantage in point of certainty is gained as regards the accused; for although a precise and particular allegation be used, yet if it may be changed at the trial to any other which might have been included under a more general count, he has not more efficient notice of the real charge than he would have possessed had the general allegation been used at first; if greater latitude were to be permitted, by allowing an allegation to be substituted although not included with that used, under a general one, the charge would be less certain than it would have been if that general allegation had been used. Information to the defendant is not, however, the object of permitting such amendments when made at the trial; they are too late to serve the great object of circumstantial certainty,—that is to notify to the accused the particular grounds of the charge; they are made to prevent the defeat of justice by a technical objection on the ground of variance from prescribed rules of technical description; in such case particularity of expression is not essential to the purposes of justices; it is therefore more consistent with reason and convenience to reject such a precise and unnecessary degree of precision, than to require without any corresponding advantage, at the risk of misleading the party charged, and at the expense of passing laws to prevent that failure of justice which would otherwise result, and of the strange anomaly that new averments should be introduced on the record as sanctioned by the oath of a grand jury, when they have in fact been inserted at the discretion of the judge.

*Variance.*

The general position, that the accused ought not to be convicted of any offence other than that charged by the grand jury and expressed in the indictment, is plain and undeniable; it is therefore essential to determine what constitutes such identity. Two offences cannot be identical if the subject matter or facts be different, or even if any one material and essential fact be different; on the other hand, there can be no inconvenience in distinguishing material facts or circumstances from such facts or descriptions as are unnecessary. There can be no difficulty in at once declaring that no variance in proof from the allegation of any superfluous or immaterial fact ought to be regarded as destructive of the identity of the charge. It is, however, apparent that such a variance from an essential fact or thing as shows that the alleged fact or thing is not that which is proved, must necessarily destroy the identity of the charge. If the prisoner were accused of robbing A. B. in a corn-field in the parish of A., and the robbing was proved to have occurred in a meadow, the allegation might well be rejected, the variance being in respect of a merely superfluous and immaterial fact. And so if the prisoner were charged with robbing A. B., with an allegation that A. B. was at the time dressed in black, the latter allegation might be rejected as being not only immaterial to the charge, but also immaterial to the identity of A. B. But if, on a charge of robbing A. B., the proof were of a robbery committed on C. D., the allegation of the name could not be rejected; for if it could, then the very object of requiring circumstantial certainty would be defeated, it would be nugatory to compel the description of the person robbed by his name, and if the name could not be rejected, the offence charged could not be the same with that proved.

*Where the allegation is descriptive of a material fact the variance is fatal.*

It seems, however, that an allegation, descriptive of a material thing, ought not to be rejected, even although such description were not essential, or were even superadded to one already sufficient. For the grand jury may have deemed such further description to be essential with a view to the identity of the fact, and if it be so, then in the particular case the description is material in order to distinguish between two transactions, to which a more general description, and such as would, in ordinary cases, be sufficient, might apply.

If, for instance, A. having borrowed several horses from B., were charged with having stolen one of them, a white horse, the rest being black, then although the allegation that A. stole a horse, the property of B., would be in itself sufficient, as containing a complete charge, yet in the particular case supposed this would leave it doubtful whether the jury meant to charge the stealing of the white horse or one of the black ones; it might therefore be doubtful whether the taking, of which evidence was offered on the trial, was the same with that on

which the charge by the grand jury was founded. Upon a second indictment, couched also in general terms, doubts might arise whether such second indictment related to the same horse with that on which the second indictment was founded. Such doubts would be excluded by the more special allegation, on the first indictment, that A. stole a white horse, the property of B.; and under such an allegation to admit evidence of stealing a black horse would, if it appeared that there had been several transactions, one relating to a white, others to black horses, be to inquire into a case different from that charged by the grand jury; and although it did not appear that there were in fact two transactions to which the more general description was applicable, the fact would be properly presumable from the very circumstance of the grand jury having deemed it to be necessary to insert the more special description. To allow such a presumption to be removed by evidence would be inconvenient, as involving a collateral inquiry, the result of which would often be unsatisfactory without an examination of the grand jurors themselves, who might have founded the special description upon their own knowledge. The disregarding such a variance might also be attended with a strange incongruity on the face of a judicial record. A. being acquitted on a charge of stealing a white horse, on a second charge of stealing a black one, the property of the same person, might plead his acquittal on the former charge, averring that the white horse of the former indictment was the same with the black horse of the latter, and not only might it be alleged that a white horse and a black one were the same animal, the fact might be found by the record to be true.

*Particularity.*

As the object of circumstantial description is to give notice to the defendant and to identify the offence, the sufficiency of the indictment in this respect ought obviously to be provided for previously to the trial. And where a defendant has had the means afforded him, before the trial, of requiring further particulars as to the details of the charge, it is to be presumed that he had sufficient notice to enable him to prepare for his defence; and his having neglected to use those means can furnish no reasonable ground for holding the charge itself to be invalid, provided it exhibited such facts as, if true, are a warrant for the judgment. Where, in truth, the defendant had been misled or surprised in any material point, the proper mode of relief would seem to be by a new trial. After the trial it might also be presumed that the charge which was then entered into was the same with that inquired into by the grand jury; the circumstances proved on the trial afford ample means for identifying the charge, or distinguishing it from one subsequently made, in the case of a plea of the former acquittal or conviction. It has been assumed that the accused has had opportunity afforded him for objecting to the want of particularity, and that the court had power to remedy the defect so far

as it was remediable, either by ordering the prosecutor to state such particulars as might be requisite, with a view to identify and notify the offence charged, so far as was practicable, or quash the indictment altogether, either for not showing such a complete and distinct charge as would determine and warrant the judgment in case of conviction, or for want of particulars which might have been stated, or the statement of them in too vague or uncertain a manner to answer the double purpose of identifying and notifying the matter charged.

## SOLICITORS' ACCOUNTS AND THE ARRANGEMENT OF PAPERS.

FROM the number of admissions into the profession which take place every term, we are induced to make the following suggestions on the arrangement of accounts and professional papers, and we trust they will be found useful, not only to those who are first commencing practice, but also to professional men already in practice.

The importance of being able to refer, with ease and expedition, to the papers in business previously transacted in the office, at however remote a period, must be acknowledged, and attention to the suggestions about to be given will lead to such a result; whilst an irregularity in office arrangements at the time of commencing practice, will most frequently lead to a continuance of irregularity, and in many instances occasion great difficulty and inconvenience in more advanced practice.

In the first place,—the young solicitor should arrange for easy reference hereafter, all his received letters, and the copies of those he writes. For reference to the received letters, he should, after numbering each letter, enter it in a book having the following columns—Number,—Date,—When received,—From whom,—Business to which relating,—and With what papers kept. An index to the names of the writers should also be kept. This *received letter book*, with the index, will be found almost indispensable.

The *Letter Book*, for copies of letters sent, (unless the solicitor *invariably* uses a manifold writer, which will seldom be the case), would be most conveniently made with 26 sheets of foolscap paper, taking half a page for each letter; so that each book will contain 200 letters, each having a distinctive number. An index book should also be prepared, and will in general be most convenient in subsequent practice, if comprising 1,000 numbers.

It will be found advantageous to allow half a page, or some other uniform space, for each letter; so as to have the same number of letters in each book, and where the letters are too long for insertion in the allotted space, and are

not made in a separate form, as will be the case in most of the longer letters, an additional piece of paper might be attached.

Where some of the letters are copied by a manifold writer or copying machine; or the copies are kept with papers in any particular business, the number should be inserted in the ordinary letter book, with the address, and reference to the book or papers where the copy will be found.

The initials of the party by whom the letters are posted or delivered, might be inserted in the letter book, with but very little additional trouble, and such a practice would in many cases be of great service.

The facilities which attention to these apparently minute suggestions will give after practice has increased, will amply repay the care bestowed in the early arrangements of the letters, and the consumption of a few extra sheets of paper.

*Day Book*.—The most useful form in which to keep this book, will be to enter in each day a statement of every transaction of business, inserting in the margin the names of the parties against whom a charge arises, and having money columns in which to enter the amount.

*Bill Book*.—The only suggestion on the keeping this book, appears to be, that each entry should be full and explanatory, so as to be clearly understood by the client, and to show him that the services warrant the charge made,—a point not sufficiently attended to in most cases; and that the out-of-pocket expenses should be entered in a separate column in the bill book, and where heavy, plainly brought before the eye in the bill when made out.

In more extended practice a waste bill book will be requisite, and in which the bills will be drawn nearly at draft distance, so as to allow of alterations before insertion in the bill book. In all cases it will be desirable to avoid any alterations in the bill book itself, where such alterations add to the amount; as in the event of the book being seen by the client, he may feel dissatisfaction at the additions. This will more especially apply in the early part of practice, where a client is more likely to leave his new solicitor, for apparently trifling causes, than after they become better acquainted, and the client feels more confidence in the solicitor.

*Cash Book*.—In order to keep the accounts with accuracy, the cash book and ledger should be prepared on the double entry system, which will be found the easiest as well as the most satisfactory mode of keeping accounts, both as regards the party himself, and others with whom he may afterwards desire to treat, either for a partnership, or sale of the practice. The system may be explained in a few words;—accounts may be kept of *things* as well as *persons*, and for each debt there must be a *corresponding credit*, and *vice versa*.—For example. The first entry in the cash book will be "*Capital*;" to which cash must be debited for the amount in hand, or at the bankers, with which to commence practice; and if the capital consists in part money borrowed, *cash will be debited to the*

person of whom such money is borrowed, for that portion, and to capital for the remainder; and in the ledger, such person and capital will be credited accordingly. For facility of reference, the folio of the ledger, in which such entry is made will be written in the cash book, in a column for that purpose adjoining the money columns, and a like entry will be made in the ledger, of the folio of the cash book in which the corresponding entry appears. The entries will stand thus;—In the cash book on the Dr. side, “To capital, amount at banker’s, £—, and in hand £—;” the folio in ledger will come next, and immediately afterwards the amount in the money columns. If part of capital borrowed, the next entry in the cash book will be, “To A. B., borrowed on bond, as part of professional capital,” adding folio of ledger, and amount.

When money is received from clients in payment or part payment of bills, cash must be debited to “professional account” for the year or years in which the bill accrues, for such amount; and in the ledger, the “professional account” must be credited by cash for the amount received. Where cash is received of clients to complete purchases or for any other purpose than the discharge of professional bills, a ledger account must be opened for such party, and cash must be debited to the party for the amount received.

In a similar way cash must be debited to some account in the ledger, for all monies which are received. On the other side, that is on the credit side of “cash,” that account must be credited by same ledger account for every sum of money which is expended, and the folio of the corresponding entry in the ledger must be entered in a column adjoining the money columns.

For disbursements on professional account, as for certificate, rent, salaries, books, stationery, fees, agents’ charges, stamps, &c., the most simple way will be to credit cash by “professional account” for the year to which the disbursement is applicable, so as to avoid the necessity for a separate ledger account of “professional disbursements,” but if it be desirous to know at once the amount of such disbursements by keeping them in a separate account, such account may be opened, and at the end of the year, or as often as may be desired, the amount of such account may be carried to the professional account in order to show the balance of profit: this will be done by crediting “professional disbursements” by “professional account,” and debiting the latter to the former.

With respect to the usual petty disbursements of an office, an account of them will be kept by a clerk in a petty cash book, the sums from time to time paid to him for such disbursements being entered in the chief cash book to debit of professional account or professional disbursements, as before mentioned.

Should any balance remain in the clerk’s hands, when the general balance of profit is desired to be taken, he will be debited to professional account, or to professional disburse-

ments, if a separate ledger account of such disbursements is kept, for the amount of cash remaining in his hands.

In order to keep a distinct account of profit in each year, it will be necessary that when receipts or disbursements are on account of any other than the current year, to make the entry accordingly; thus, suppose 50*l.* to be received from a client for services performed in the years 1845 and 1846, in order to keep a correct professional account, it will be necessary to debit cash to “professional account 1845,” for the portion of the bill accruing in 1845, say 30*l.*, and to “professional account 1846,” for the portion accruing in 1846, being the remainder of the sum, otherwise no accurate account can be kept of the profits in any particular year.

There will be no difficulty in thus keeping the accounts, if, when the bills are posted up, or at any time before payments are made, the proportion in each year be noted in pencil at foot of the bill, in the bill book.

In some cases it may happen that part of the amount due on a bill accruing in several years, may be paid, and in such case, the earlier portions may be considered as discharged, or if any fear should exist of losing the remainder, and it be desired, to assume each year as bearing its share of the loss, the amount should be apportioned accordingly:—for example, suppose a bill for 100*l.* to be due for the years 1845 and 1846, half having accrued in each year; and that 60*l.* is paid, and the loss of the remainder is probable, then in order to apportion the loss between the two years, cash may be debited to “professional account 1845” for 30*l.*, and to “professional account 1846” for 60*l.*:—or if not thought that the remainder of the bill is otherwise than good, 1845 may be credited for 50*l.*, in discharge of the amount having accrued in that year, and 1846 for 10*l.*, the balance of the payment.

*The Ledger.*—The observations relative to the cash book will explain in great measure, the points likely to require attention with regard to the ledger.

An account should be opened for “capital,” another for the banker or other person of whom any money is borrowed in aid of capital; a separate “professional account” for each year, and the like as to “professional disbursements,” if such account is kept separately as mentioned under the head “cash book.”

Personal accounts must also be opened, for all clients or others, with whom there are business transactions, not appearing in the bill book; for instance, the receipt or payment of any monies on account of purchases, &c. In these personal accounts it will be better in general not to include the bills, unless when settled by balance of accounts; in which case, instead of entering the amount of the payments in the cash book, the client will be debited to the professional accounts in the ledger, for the years during which the bills have accrued for the portions accruing in the respective years, and those amounts in the ledger will be credited by the client, the folios in the corresponding

entries being stated (as in all other ledger entries) in the columns for such purpose in each folio of the ledger.

The profit in each year will appear by the professional account for that year, adding the unpaid portion of the bills accruing in that year, or such part as may be deemed good; and the necessity for keeping a distinct ledger account of "profit and loss" may be avoided.

In the case of a partnership, there must of course be a separate account for each partner, who will be credited by "capital" for the amount he brings in, and by "professional account" for interest on such capital, and also for his share of the profit in each year, as the accounts are from time to time balanced. He will be debited to "cash" for all sums paid to him out of the cash at the banker's, or which has been received by the firm and consequently entered in the cash book, or to "professional account" for any sums paid to him by the clients, and not so entered.

Even where the solicitor practises alone, there must be a separate personal account, in which he must debit himself for all monies he may receive for personal expenditure out of the practice.

In addition to the books before suggested, a "Register of Practice" should be kept, in a book having the following particulars in columns: No.; Date of commencement; Clients' names; Nature of the business; Where papers kept during progress; Date of completion; and, Where papers kept after completion. An index of the clients' names, with reference to the number designating each matter relating to them, should also be prepared.

This book will be found of great service after practice becomes extended, and will frequently save many long and often unsuccessful searches for papers in business previously completed. The reference to the place of deposit will not prevent the keeping all drafts of a particular form together, as precedents for drafts, in subsequent transactions of the same kind, as in the papers nothing more will be requisite than to give the following or a similar reference: "See also Draft freehold conveyances, A. to B., 1846," &c.

A Retainer Book will also be useful, though in many cases there is a difficulty in asking a client to sign a regular retainer, and consequently, it may be needless to add any suggestions here with respect to the keeping such a book.

In concluding the suggestions now offered to the young practitioner, it may be proper to assure him, that he will find but little, if any, difficulty in attending to them on commencing practice, and that he will, throughout his professional life, find a methodical arrangement of professional papers and accounts not only of great service in the efficient management of a large practice, but attended with far less trouble than the attempt to carry on a practice without such an arrangement.

R.

## REMOVAL OF POOR BILL.

To the Editor of the Legal Observer.

SIR,—The observations of "A Young Attorney and Subscriber," in your last number, are entitled to consideration. But, after all, the great objection, I think, to the bill brought in by Mr. Bodkin and Mr. Cripps, is the creation of a barrister for Poor Law appeals.

My opinion is, that the creation above alluded to, and the provisions arising out of it, will, if carried, lead to intricacy instead of simplicity, and, consequently, will increase, rather than decrease, the expenditure in such litigation.

On the 16th of February, 1844, I forwarded to Sir James Graham suggestions for the remedying of the defects in the existing law as to removals and appeals, and these suggestions were adopted by clauses introduced into the "Parochial Settlement" Bills, brought in by Sir James Graham and Mr. Manners Sutton, on the 8th of August, 1844, (sections 17, 20, 22,) and the 17th of February, 1845, (sections 16, 19, 21); and I still hope to see a bill passed in the ensuing session, confined to the clauses I have referred to, which would, I confidently anticipate, be amply sufficient to remedy the defects in the present law.

T. W. WALFORD.

Usbridge, 8th Dec. 1845.

## NOTES OF THE WEEK.

### THE BRAZILIAN PIRATES.

It has been suggested that we should state concisely the legal points under discussion before the fifteen judges. They were as follow:—

In favour of the prisoners,—

1. That the Brazilian ship, the *Felicidade*, was illegally captured, because there were no slaves on board, and therefore remained Brazilian property.

2. That the capture of the *Echo* also was illegal, because the *Felicidade* being wrongfully taken, did not become a British ship, and because it was boarded by an officer inferior in rank to a lieutenant;—

Consequently, that the crews of both vessels, thus unlawfully detained, might do all necessary acts to regain their liberty and property.

For the Crown, it was maintained: 1. That both vessels being engaged in the slave trade, were legally captured. 2. That though the *Echo* was actually taken possession of by a midshipman, she had previously surrendered to the lieutenant. 3. That even if the *Echo* had not been duly captured, her crew, being on board the *Felicidade*, were not justified in seizing that ship and murdering her crew.

We understand the judges have decided in favour of the prisoners; and we shall again advert to the subject in an early number. This case, indeed, affords another instance of the necessity of a regular court of appeal in criminal cases.

# STRIKING AN ATTORNEY OFF THE ROLL FOR NON-REGISTRATION OF PUBLIC COMPANIES.

The 7 & 8 Vict. c. 110, s. 6, provides, on the appointment of a solicitor to any public company, that such solicitor shall make the returns required by the act; and if he fail to make the returns, he is liable to forfeit 20*l.*; and if he fraudulently omit them, he is liable to be suspended from practice, or to be struck off the rolls! There is thus some risk connected with these lucrative appointments.

## SHARE BROKERS PREPARING TRANSFERS.

There is no doubt that stock and share brokers, who prepare transfers of shares without the intervention of a solicitor, are liable to be sued for the penalties, if it can be proved that they have so acted "for or in expectation of any fee, gain, or reward, directly or indirectly." See 44 Geo. 3, c. 98, s. 14.

In the present state of things, the brokers ought to be content with the enormous profits they realize by their commission on sales and purchases, without encroaching upon the rights of the profession.

## CHANCERY RAILWAY-SPEED.

A correspondent states, that on Thursday, *too late for post*, he was served with an order to *join in commission*, in a Chancery suit, *within two days after notice*. On Friday he sent intimation to his client in the country, but could not possibly get an answer before Monday morning, and, supposing Sunday did not intervene, even that would be too late.

The Court of Chancery, he observes, has now got to the other extreme; and unless this railway-speed be stopped, it will lead to serious inconvenience. Our worthy complainant will find that there are four days after the replication, besides the two days' notice.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

PRACTICE. — INFANT. — CONSTRUCTION OF 11 G. 4 & 1 W. 4, c. 36.

*The court has no power to order a master in chancery to execute a conveyance for an infant who has refused to obey an order of the court for executing such conveyance, although an attachment may have been issued against him; unless the case can be brought within one of Sir Edward Sugden's acts.*

An order having been made for sale of certain property mentioned in the pleadings, the master was directed to settle the conveyance, in which all proper parties were to join. The

master accordingly approved the conveyance, and directed that the infant defendant, John Thomas, should execute it. On the 11th of June, 1844, an order was made, by which the infant defendant was directed to join in and execute the conveyance, in pursuance of which a conveyance was tendered to the defendant for his execution; but he being only eight years of age, and wholly under the influence of his mother, who advised him not to execute, refused to do so. On the 18th of March, 1845, a further order was made, whereby it was directed that he should execute the conveyance within 14 days after service of that order; whereupon he was again applied to, and refused. An attachment was then issued, upon which he was taken into custody, but was afterwards rescued, and the sheriff's officer seriously maltreated.

Mr. Pigott now applied for an order that one of the masters of the court might be directed to execute the conveyance for the infant, and in support of the motion cited *Warburton v. Vaughan*, 4 Yo. & Col. 247; *Prendergast v. Eyre*, Lloyd & G. 11; urging that the case was within the 15th rule of 11 G. 4 & 1 W. 4, c. 36.

The *Master of the Rolls* said, that to warrant the court in making the order, the case must be brought either within the 11 G. 4 & 1 W. 4, c. 47, s. 11, by which a court of equity was empowered to direct an infant to convey where a suit was instituted for the purpose of satisfying the debts of a dead person; or within the 15th rule of 1 W. 4, c. 36, by which the court might direct a master to execute a deed in the place of a person in custody; or within the 11 G. 4 & 1 W. 4, c. 60, (the Trustee Act): and as it did not come within either of the cases there provided for, the motion must be refused.

*Potts v. Cutton*, Nov. 20th, 1845.

### Vice-Chancellor of England.

LAST INTERROGATORY. — 32ND ORDER OF 1828.

*The words "or either of them" were omitted in this interrogatory, and their place was not supplied by any equivalent expression: Held, that the interrogatory must be suppressed, and the deposition taken under it expunged.*

THIS was a motion to suppress an interrogatory and expunge the deposition taken under it, for irregularity in not complying with the 32nd Order of 1833. That order directs, that "the last interrogatory" shall for the future "stand and be in the words or to the effect following: — Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties to this cause, *or either of them*, or that may be material to the subject of this your examination, or to the matters in question in this cause? if *yes*, set forth the same," &c. The irregularity com-



plained of in the present instance was, the omission of the words "or either of them."

Mr. Wakefield and Mr. Shebbeare, for the motion, contended that the omission of these words tended to produce that one-sidedness in the answers of the witness which it was the object of the 32nd Order of 1833 to prevent. *Gover v. Lucas*, 8 Sim. 200.

Mr. Bethell and Mr. Cole, contra, urged, that the interrogatory contained in the 32nd Order, as worded there, was absurd, proceeding upon the hypothesis that a witness could state something which should be of advantage to both parties; and that the interrogatory as framed was sufficiently "to the same effect" with that contained in the order, to meet its object: in fact, that the sense of the interrogatory was improved by leaving out these words. But

The Vice-Chancellor said, it seemed to him that the case was clearly with those who made the motion. The order directed that the interrogatory should be in the words or to the effect specified. If instead of the word "parties," the words "plaintiffs or defendants" had been used, or the word "important," instead of "material," that would have been "to the effect" of the form given in the order. But the order could not be said to be complied with when such marked words as those, "or either of them," were left out, and nothing substituted in their place. The order, therefore, must be made as asked.

A question was then raised as to the costs, when his Honour said, *Incuria fudit*, the in-curious party pays the costs.

*Pinnock v. Kernel*, Nov. 20, 1845.

#### Queen's Bench.

(Before the Four Judges.)

#### CERTIFICATE. — COSTS. — TRESPASS. — PRACTICE.

*Though the fact of a notice not to trespass has been proved at the trial, yet if the judge omits to certify under the 8 & 9 W. 3, c. 11, that the trespass was wilful and malicious, the plaintiff cannot, with a verdict for him with less than 40s. damages, recover his full costs. The 3 & 4 Vict. c. 24, s. 3, does not render a certificate unnecessary.*

*Leave to enter a suggestion under the statutes 8 & 9 W. 3, c. 11, and 3 & 4 Vict. c. 24, must be the subject of a distinct application, and cannot be granted summarily on discharge of a rule.*

Mr. Cockburn showed cause against a rule calling on the master to review his taxation of costs. This was an action of trespass, in which the verdict passed for the plaintiff, but only with nominal damages. The master had, however, taxed costs on the full scale. He had done this on proof that the trespass was a second trespass on the same land, and had been committed after notice given to the defendant not to trespass. The learned judge

had not certified, under the 8 & 9 W. 3, c. 11, s. 4, that the trespass was wilful and malicious, but the master, on account of the proof of notice, thought that it ought to be so treated, and that under the 3rd section of the 3 & 4 Vict. c. 24, the larger scale of costs might be given. This opinion of the master is correct, and the costs have been properly taxed. In the case of *Sherwin v. Swindall*,\* the construction of the statute of Victoria came under the consideration of the Court of Exchequer, and there it appeared to be the opinion of the court that under the 3rd section of that statute, the fact of notice must appear on the face of the record, it did not appear in the declaration, then it must appear by entering a suggestion. But it is clear that no certificate nor any statement on the face of the record is necessary. The 3rd section expressly excludes such necessity, by providing that nothing in the act contained "shall be construed to extend to deprive the plaintiff of costs in an action for a trespass to land, in respect of which notice not to trespass shall have been previously served upon or left at the last reputed place of abode of the defendant in such action." This section does not require the fact to be shown on the record in any manner whatever; it is sufficient if proof of it is given: and here that proof was given. Under such circumstances, the judge's certificate is not necessary. That certificate is required in the other instances mentioned in the act; but here the section gives the costs upon the fact of notice being proved.

Lord Denman.—It seems to me that the old act has not been complied with, for there is no certificate; and the new act says that the party shall not lose his costs in any case in which the old act gave them to him. The taxation must be reviewed.

Rule absolute.

Mr. Cockburn then applied for leave to enter a suggestion.

The court declined to grant leave on this application: it was the subject of an entirely new rule.

*Dawe v. Cole*, M. T. 1845.

#### ATTORNEY'S ADMISSION.

*Circumstances under which the court authorised an applicant to be admitted as an attorney.*

Mr. Jervis moved that this applicant should be admitted as an attorney.

Mr. Robinson, on the part of the Incorporated Law Society, thought it necessary to lay before the court certain circumstances connected with this applicant, and then to leave the matter in the hands of their lordships. About five years ago, there was an application by this person to be re-admitted an attorney. A charge was then made against him, and was referred to the master to report. Since then,

\* 13 Law Journal, N. S. Exc. 237. 13 Mee. & W.

until the present application was made, nothing had been done, and the rule for re-admission of the applicant had not been drawn up. The matter was now again brought forward. The Law Society could not, as a matter of respect to the court, let the matter rest there, but felt bound to make inquiries respecting the character and conduct of the applicant; and it was found that, since the period of the act with which he had been charged on, the former occasion, his conduct had been irreproachable.

**Lord Denman.**—What was that charge?

**Mr. Robinson** said it was, not duly accounting for some money which belonged to his master. That master was at present one of the governing body of the Law Society, and was now prepared to state, that since the period of the first act of misconduct, the applicant's conduct had been perfectly good.

**Mr. Jervis** submitted, that the length of time during which the applicant had been prevented from practising had been a very severe punishment on him, and referred to the good character which he had since deservedly borne.

**Lord Denman.**—Under all the circumstances of the case, we think that the applicant may be admitted.

Application granted.

*Es parte* ——. 25th Nov. 1845.

### Common Pleas.

PRACTICE.—CAPIAS.—PRISONER.—NOTICE OF DECLARATION.

*A defendant in custody under a writ of capias, issued pursuant to a judge's order, is not entitled to a copy of the declaration filed while he was in custody; but the plaintiff may serve him with a notice of declaration, the capias being only a collateral proceeding in the suit.*

A RULE had been obtained, calling upon the plaintiff to show cause why the notice of declaration which had been served upon the defendant, should not be set aside for irregularity. The plaintiff had entered an appearance for the defendant, and filed a declaration, of which notice was duly given to him, but at the time the declaration was filed, the defendant was in custody upon a writ of capias, issued under a judge's order, pursuant to statute 1 & 2 Vict. c. 110.

**Channell**, Serjeant, showed cause. The objection to the regularity of the notice is, that a plaintiff cannot file a declaration and serve a defendant with notice thereof, when the defendant is a prisoner. That objection, however, is founded upon a mistaken apprehension that the old practice in regard to declaring against prisoners is still in force. The writ of summons is now the commencement of all personal actions, and a capias is a mere collateral proceeding. [He was then stopped by the court.]

**Dowling**, Serjeant, in support of the rule. The question is, whether the new statute, 1 & 2 Vict. c. 110, has made any difference in the practice which obtained formerly in declaring

against prisoners. If the action had been commenced by a writ of capias, there can be no doubt that the defendant must have been served with a copy of the declaration, instead of a notice that it had been filed. There seems to be no reason why a similar indulgence should not be shown to a defendant when the action has been commenced by writ of summons, and the defendant is afterwards arrested under a judge's order. [*Tindal*, C. J. The capias may issue long after the declaration has been filed. How does it alter the nature of the suit?] It is submitted that the nature of the cause may be changed by the issuing of the writ of capias to one founded upon the latter writ. Such seems to have been the opinion of *Alderson*, B., in *Ball v. Stanley*, (6 M. & W. 399.) The reason for the old practice was to prevent the plaintiff's taking advantage of the defendant's position as a prisoner, and that reason would apply with equal force in the present case.

*Tindal*, C. J. No authority has been cited to show, that if, in the course of a cause, an order of judge is obtained for a writ of capias, upon which a defendant is arrested, the action which was commenced by writ of summons, and is then going on, is at all altered in its nature. It seems to me that when a writ of summons is served upon a defendant, he can enter an appearance for himself, or if he fails to do so, the plaintiff may enter one for him. I do not see, therefore, how a collateral proceeding like the issuing of a writ of capias to hold the defendant to bail, can make any difference.

*Coltman*, J. It does not appear to me that any change is made by issuing a writ of capias, in the nature of an action which can only be founded upon a writ of summons. The reason for the old practice is not at all applicable to the present case, because the stat. 4 & 5 W. & M. c. 21, only extended to persons imprisoned for want of sureties for their appearance to the writs by which actions had been commenced against them. Here the defendant has appeared. The rule must therefore be discharged, and as it was moved with costs, with costs.

*Erle*, J., concurred.

Rule discharged accordingly.

*Neal v. Snoultten*. M. T., Nov. 25, 1845.

PRACTICE.—ISSUE.—IRREGULARITY.

*An issue delivered with blanks for dates is not a nullity, but merely irregular, and therefore the irregularity may be waived.*

**C. Jones**, Serjeant, showed cause against a rule which had been obtained to set aside the issue and notice of trial herein, for irregularity. The issue was delivered with two blanks where dates ought to have appeared, but he submitted that this irregularity had been waived. The issue and notice of trial had been delivered on the 12th of Nov., notice of countermand was given on the 19th, and the rule was not moved for until the 20th.

**Dowling**, Serjeant, in support of the rule, contended, that the omission of the dates was

not merely irregular, but made the issue a nullity, and therefore there was no waiver.

*Sed per curiam.*—The omission is no more than a common irregularity, and that appears to have been waived.

Rule discharged with costs.

*Peart v. Hughes.* M. T., Nov. 25, 1845.

### Exchequer.

#### EXECUTION. — WRITS. — WARRANT OF ATTORNEY. — BANKRUPT.

*Where judgment has been entered up more than twelve months on a warrant of attorney, an agreement to waive the necessity of a scire facias is not a condition which renders the warrant of attorney void as against the assignees of a bankrupt for want of enrolment under the 3 Geo. 4, c. 39.*

*Writs in the new form need not be continued in a similar manner to those in the old form. On mesne process a writ may be issued in continuation of another at any time within twelve months. Writs of execution have no such limit.*

A RULE nisi had been obtained to set aside the execution issued on a warrant of attorney for irregularity; judgment was entered up on the 3rd September, 1841, and more than a year afterwards, a judge's order was drawn up, by consent, for execution to issue, without reviving the judgment by *scire facias*. On the 14th September, 1842, a writ of *feri facias* issued, which writ, on the 29th December in the same year, was returned *nulla bona*. On the 23rd April, 1845, an *alias feri facias* issued, under which a levy took place. The defendant shortly after became bankrupt, and the present application was made by his assignees, on the grounds — first, that execution issued without a *scire facias* to revive the judgment; secondly, that the second writ of *feri facias* was irregular, inasmuch as it was not connected with the first writ.

*Martin* showed cause; and, as to the first point, contended that the necessity for a *scire facias* was waived by the consent to the judge's order. Upon the second point he argued, that under the new form of writs there was no necessity for entering continuances, as the writs were not returnable until after execution. He cited 2 Williams, Saund. 72, and *Simpson v. Heath*, 5 M. & W. 631.

*Henderson*, in support of the rule.—The consent to the judge's order is void as against the assignees. Its effect is, to introduce a new stipulation into the warrant of attorney, and consequently there has been no enrolment of that instrument, as required by the 3 Geo. 4, c. 39, ss. 1, 2. Secondly, the *alias* writ is not connected with the first writ. Even supposing the necessity for a *scire facias* waived as to the first writ, more than a twelvemonth having elapsed before the second writ issued, it required a *scire facias* to support it. There must be some connexion between the writs;

and if, under the new forms, that cannot be done by entering continuances, recourse must be had to the old form of writs. He cited *Greenshields v. Harris*, 9 M. & W. 774; *Bellases v. Hanford*, Cro. Jac. 364.

*Cur. adv. vult.*

*Parke, B.*—In this case a rule was obtained to set aside a judgment on a warrant of attorney, with a defeasance. The principal ground upon which the application was originally made was, that the first execution issued without a *scire facias* to revive the judgment; but that objection appearing to be removed by the judge's order by consent, two others were relied on. The first was, that the judge's order by consent, though valid between the parties, was void as against the assignees, as being against the policy of the law, 3 G. 4, c. 39, which makes warrants of attorney void against assignees, unless registered, and expressly enacts, that such warrants of attorney upon which the defeasance or condition has not been written, shall be void to all intents and purposes. This proviso the Court of Queen's Bench, in *Bennett v. Daniel*, 10 B. & C. 500, held, had the effect of avoiding such warrants of attorney as to assignees only; and it was argued, that the stipulation that no *scire facias* should be necessary, not being part of the defeasance indorsed on the warrant of attorney, was altogether void as against the assignees. This objection ought not to prevail, because the agreement to waive the necessity of the *scire facias* was in fact no part of the defeasance or condition,—even supposing that term to embrace all the contemporaneous stipulations; for it was made at a subsequent time, and indeed was nothing more than a waiver of the suing out a *scire facias*, (which the plaintiff was about to do in order to warrant an execution on his judgment,) and was consented to for the purpose of saving expense. The next objection was, that the *alias feri facias* was irregular, because it was not properly connected with the first *feri facias*; nor could any continuances be entered on the roll to cure that defect, because if continuances were entered, it would be necessary to amend the *alias*, by converting it into a *pluries*, and such an amendment, though it would be allowed as against the original defendant, could not be permitted as against his assignees. This objection is founded on the supposition that process in the new form must be continued in a similar manner to that in the old form. It seems to me that this is unnecessary. In the old form such subsequent writ of mesne process was tested on the return day, *quarto die post*, when the proceedings were by original, and in case of final process, on the return day of the preceding writ. The writ might be sued out tested of a prior date, and there never was any difficulty in connecting one writ with another by an entry of "*vicecomes non misit breve*," on the return day of the prior writ. But in the new process the writs must be tested or bear date on the days they are sued out, 2 Will. 4, c. 39, s. 12; and writs of *capias ad responden-*

*dum* are returnable on execution, but have a return day contingently at the end of four months; those of *capias ad satisfaciendum* have no fixed return day; they are returnable on execution, and if not executed, are not properly returnable at all; — the judge's order, in case of writs of execution, being rather a mode of obliging the sheriff to notify to the court what has been done under the writ, than creating a new return day for the writ, instead of the former one expressed in the body of the writ itself. *Kemp v. Hyslop*, 1 M. & W. 63. The old mode of continuing, by entering on the record a fictitious writ, with a teste of the return day of the former writ, cannot now be adopted with respect to this description of writ, for there is no such return day; and if a judge's order had the effect of making a return day for the writ, or if the writ, when returned in obedience to it, would be spent and determined, (as I have no doubt it would,) so that a new writ might issue founded on the return, I do not think the court would sanction the entry on the record of a fictitious judge's order to return a writ in order to make proper continuances; and if one writ was actually returned by virtue of a judge's order, another new writ, which must be tested on the very day it issues, could not be a proper writ in continuation, unless it actually issued on the very day of the former return, — a course so inconvenient that it could very rarely be adopted, and practically there would be no available mode of continuing such a writ on the old principle, which, though a fiction, made the record consistent, and excluded any presumption of satisfaction of the debt arising from intermediate delay. What, then, is to be done when a writ of execution is issued within the year after the judgment or its revival, and the plaintiff wishes to avoid the necessity of a *scire facias*? Must the plaintiff issue process in the old form, with fixed return days, — which he has the option of doing, for the statute 3 & 4 Will. 4, c. 67, is not obligatory, — or may he adopt the new form without any continuances? If the legislature did not intend that the process in the new form should be connected together in any way, then it would follow that if the plaintiff meant to avoid the necessity of a *scire facias*, he must adopt the old form of process and the old form of continuances; or if the legislature intended that the new process should be connected by issuing the one writ on the precise day that the other was returned, that course must be adopted. It is highly probable that all the consequences of the changes introduced by the statutes 2 Will. 4, c. 39, and 3 & 4 Will. 4, c. 67, were not foreseen; but I think that the legislature must be taken to have intended that process in the new form should be connected, and that the only mark of connexion should be, the description of one writ being an *alias* or a *pluries* writ. Now, with respect to mesne process, it is clear that the intention of the legislature was, that the writs should be connected; for it is expressly provided by the 2 Will. 4, c. 39, s. 10, that

every writ of summons and *capias* may be continued by an *alias* and *pluries*. It is unnecessary that one writ of mesne process in continuation of another should be issued on the very return day of the former writ; for where the operation of any statute of limitation is to be defeated, (when the object is not to favour the connexion of one writ with another,) it may be sued out within one month. It would seem that the writs might be sued out at a greater interval in ordinary cases, and it has been so held with respect to a *capias ad respondendum*, even where it was issued beyond the period of four months, — *Nicholson v. Leman*, 2 Dow. P. C. 296; nor need the first writ be returned, — *Gregory v. Des Anzes*, 5 Dow. P. C. 593. What, then, is to be the interval during which a writ may be issued in continuation of another on mesne process? There appears to be none but the limitation of twelve months, after which the cause is out of court. As the subsequent statute for the amendment of the former, 3 & 4 Will. 4, c. 67, enables a plaintiff to sue out writs of execution in the new forms, I think it must be intended that such writs should have similar properties with writs of mesne process, and consequently that succeeding writs need not be tested on the day of the return of the preceding writ, nor within any particular time afterwards; for the limitation of twelve months does not apply after judgment. Nor will any practical inconvenience to the defendant follow, for a writ of execution may now be sued out with a long interval between the teste and return, the rule as to process being returnable in the following term not being applicable to final process; nor, if the writ be continued on the record, does the defendant derive any real advantage. If the amount of the judgment has really been paid before the *alias* or *pluries* writ has issued, the defendant would be relieved on motion or *audita querela*. For these reasons, I think the execution regular, and the rule must be discharged.

*Harmer v. Johnson*. Exchequer. Trinity Term, 10th June, 1845.

#### BANKRUPTCY DIVIDENDS DECLARED.

From Oct. 28th, to 28th Nov., 1845, both inclusive.

- Barker, J. V., Walsall, Banker, surviving partner of W. Marshall, div. 6d. On separate estate of J. V. Barber, div. 6s. 2s.
- Barber and Adams. Div. ½d.
- Baxter, R., Sheffield, Knife Manufacturer. Div. 5s.
- Beckett, W., Doncaster, Money Scrivener. Div. 2s. 6d.
- Bennett, J., New Mills, Little Birch, Hereford, Cattle Dealer. Div. 8s. 6d.
- Bishop, G., St. Mary Axe, Ship Broker. Div. 1d.
- Bousfield, T., Lincoln, Ironfounder. Div. 5s.
- Brewer, T., Liverpool, Flag Dealer. Div. 2s. 3d.
- Briddick, W. B., Durham, Dealer in Iron. Div. 4s.

Byford, G., Liverpool, Grocer. Div. 5s.  
 Chambers, A. H., sen. and jun., New Bond Street, Bankers. Div. 9s. on separate estate of A. H. Chambers, sen. Div. 5s. 6d.  
 Cheetham, M., and W. Smedley, Manchester, Piece Dyers. Div. 6s. 6d.  
 Clifton, T., Barnard Castle, Bookseller. Final div. 1s. 10d.  
 Cohen, B., Bishopwearmouth, Hawker. Final div. 8d.  
 Crabtree and Burnley, Turnstead, Rossendale, Wool-len Manufacturers. Div. 13s. 4d.  
 Currie, R., Newcastle-upon-Tyne, Bookseller. Final div. 3½d.  
 Deas, W., J. Deas, and J. Hogg, Newcastle-upon-Tyne, Builders. Final div. 6s. 2½d.  
 Dixon, H. J., and J., Kidderminster, Carpet Manufacturer. Div. 4d.  
 Fernandes, J. S., L. N. Fernandes, and J. L. Fernandes, jun., Wakefield, Corn Millers. Final div. 3½d.  
 Goodeve, W. S., Chichester, Banker's Clerk. Div. 1d.  
 Garbell, T. K., Bedford Place, Mile End Road, Bookseller. Div. 1s. 7d.  
 Green, S. W., Leeds, Bookseller. Div. 5s.  
 Greenhow, C. H., North Shields, Broker. Div. 2s. 6d.  
 Groombridge, J., King John's Head, Bermondsey. Div. 1s.  
 Halford, R., W. H. Baldock, and O. Snoulten, Canterbury, Bankers. Div. on separate estate of W. H. Baldock, 10½d.  
 Hall, W., Durham, Grocer. Div. 1s.  
 Hardy, J., and G. Wesbech, Cambridge, Grocer, Div. 4d. On separate estate of J. Hardy, div. 7s. 11d.  
 Haynes, H., Scole, Norfolk, Innkeeper. Div. 1s.  
 Hentig, R., Kingston-upon-Hull, Merchant. Final div. 1s. 2½d.  
 Heron, E., Hartlepool, Butcher. Div. 1s.  
 Herring, J. and W., Newcastle-upon-Tyne, Timber Merchant. Final div. 2½d.  
 Hill, W., and W. K. Wackerbarth, Leadenhall Street, Merchants. Div. 7½d.  
 Hitchin, H., Halifax, Ironmonger. Final div. 4s.  
 Irving, J., Blackburn, Linen and Woollen Draper. Div. 11½d.  
 Jones, B. S. Div. 8s.  
 Jones, J. Div. 3s.  
 Kesselmeier, C. W., Manchester, Merchant. Div. 2s. 7d.  
 Kitchen, J., Stockport, Corn and Flour Dealer. Div. 8d.  
 Knight, J., Wigan, Butcher. Div. 4s. 6d.  
 Lawton, E., and T. Kay, Rochdale, Ironfounders. Div. 2s.  
 Leader, J. M., 361, Oxford Street, Coach Maker. Div. 4s. 10d.  
 Lewis, J., Birmingham, Card Manufacturer, &c. Div. 9½d.  
 Livingston and Brittain, Manchester, Plumbers. Div. 6s. 6d.  
 Lorraine, T., Newcastle-upon-Tyne, Bookseller. Div. 5s. 6d.  
 Lowthian, J., and R. J. Brinley, Newcastle-upon-Tyne, Printers. Div. 12s.

Mainwaring, H., Manchester, Draper. Div. 2s.  
 Mead, S. Div. 1s. 5d.  
 Mierns, W., York, Oil Merchant. Final div. 1s. 9d.  
 Mucklow, J., Birmingham, Publican. Div. 1s. 9½d.  
 Nell, W., Manchester, Common Brewer. Div. 4s.  
 Newton, T., Holbeach, Cattle Dealer. Div. 3d.  
 Pallister and Newrick, Sunderland, Grocers. Final div. 4½d.  
 Parker, C., Bristol, Mercer. Div. 3½d.  
 Parsons, W., Bristol, Brewer. Div. 3s.  
 Ridge, W., C. Ridge, and W. Newland, Chichester, Bankers. Div. 3½d.  
 Rolfe, W., Thetford, Bedford, Farmer. Div. 1s. 6d.  
 Seddon, T. and G., Calthorpe Place, Gray's Inn Road, Upholsterers. Div. on separate estate of T. Seddon, 20s.  
 Sherratt, C., Walsall, Saddlers' Ironmonger. Div. 1s. 10½d.  
 Simpson, A. H., and P. H. Irvin, Blackfriars Road, Engineers. Div. 3s. 4d.  
 Stonehouse, J., Scarborough, Mercer. Div. 7s. 6d.  
 Thompson, P., Huddersfield, Bookseller. Final div. 1s. 10½d.  
 Walker, G., Newcastle-upon-Tyne, Ship Broker. Div. 3s. 9d.  
 Webb, C., Oxford, Apothecary. Div. 2s.  
 Weir, W., Carlisle, Iron Merchant. Final div. 1s. 4½d.  
 Withers, T. R., Rumbidge, Eling, Southampton, Brewers. Div. 7s.  
 Wood, J., Cardiff, Banker. Div. 4s.  
 Wrigley, B., Horeast, York, Cloth Manufacturer. Div. 7s. 5d.

### THE EDITOR'S LETTER BOX.

THE *Legal Almanac* for 1846, amongst other additions since the previous edition, contains a list of the statutes effecting alterations in the law during the last 15 years. The mere titles of the acts occupy 13 pages! The acts themselves will all be found in the 30 volumes of the *Legal Observer*.

"Indolis" may obtain the information he requires at the Incorporated Law Society. No doubt he is admissible.

A subscriber at Portsea is informed that his suggestion of an Index to the last 10 volumes of this work is under consideration, and if the plan at present in view can be satisfactorily realised, the Index will be no additional expense to the subscribers.

"A Law Clerk" should not stop his salary, unless he is authorised to do so out of the monies entrusted to him; but as it is usual to pay weekly, we cannot understand why the attorney should object to the charge.

An articulated clerk, who much approves of the very useful lectures at the Incorporated Law Society, suggests that the lecturer, out of the many cases usually cited in support of the principle or point which he is discussing, should refer to one or two of the most important, or to that one in particular where the several authorities are quoted and critically reviewed in the judgment; whereby, the writer conceives, a great saving of time would be effected, and the student facilitated in his researches.

# The Legal Observer.

SATURDAY, DECEMBER 20, 1845.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## CHANGE OF MINISTRY AND LAW OFFICERS.

MANY changes of administration have taken place during the progress of this work, and we have often stated, that so far as merely political causes have produced such changes, it concerns not us to notice or regret them. Our duties are purely professional. If we had a choice, indeed, we should prefer a Prime Minister who entertained a high respect for our ancient laws and institutions, and was exceedingly slow and cautious in altering them.

Though, however, it is not our province to meddle with politics, (in their ordinary aspects,) we cannot be insensible to changes which in their consequences may possibly affect the *rights*, and the ultimate *security of property*. Lawyers may care not to which of the two great parties in the state the responsibility may be confided of governing the country, but they cannot be indifferent to changes which may in any degree tend to shake the public confidence in the stability of the laws by which property is secured, — under which existing contracts are respected, — good faith kept, — and the fruits of industry protected.

Every owner of property is a client, and we cannot be indifferent to his interests. In behalf of the “rights of property,” — more respected in this than any other country, — every lawyer is specially retained. Where indeed would be the motive to that extraordinary exertion, those

powers of endurance, and that spirit of enterprise for which Englishmen are distinguished, if protection of the highest kind, both legal and moral, were not vouchsafed? It would be “but lost labour to rise up early, and late take rest, and eat the bread of carefulness,” if the accumulations of labour and economy were not placed beyond even the apprehension of insecurity. Whilst, therefore, we are no party politicians, we must admit ourselves not to be indifferent spectators of vast changes in the constitutional fabric of our ancient policy and social system.\*

Whatever may be the political predilection of lawyers in regard to the Conservative cause, — to which they are assuredly for the most part strongly allied, — they are nevertheless generally governed, in regard to the administration of justice, by a sense of professional duty, which leads

\* We have been asked, in case the corn laws should be immediately and wholly repealed, what compensation will be provided for those who will suffer the ruinous losses necessarily following the breach of innumerable *contracts* for the supply of corn during the next ten months? We have also been reminded of the *leases* (some of long duration) between landlords and tenants, which have been granted by the one and accepted by the other on the express basis of a protective duty, by which the amount of rent was regulated. What would be the consequences, to all classes, of the violation of the principle of these leases and agreements? If change there must be, then here, as in reforming the law, the alteration should be slow and gradual.

them earnestly to desire that men should be elevated to the bench for their judicial qualities, and not their political opinions. On a recent vacancy, when a judge was chosen by the ministerial leader from the ranks of the Whig opposition, and some eminent Conservatives were passed over, the profession approved the appointment, because a man was selected at that time confessedly the fittest for the office. So the general voice on the present occasion is in favour of Lord *Cottenham*, whose judicial qualities have been long tried, and whose eminent fitness and capacity is universally acknowledged by all parties.

We participate in the general regret at the resignation of Lord *Lyndhurst*, thrice Lord Chancellor, whose genius, both as a statesman and a lawyer, is of the highest order. Endowed with an almost unrivalled capacity to seize and retain the most numerous and complicated series of facts;—with singular skill in logical arrangement;—with powers of reasoning rarely equalled and never surpassed;—clear and impressive in his delivery, with a noble presence, and a manner at once dignified and courteous;—he is indeed one whom nature and art have combined to place in the very foremost rank of public men.

But this sincere admiration of his great and noble qualities must not blind us to the consequences on the profession of his belonging to a ministry which, however generally Conservative, was (perhaps unavoidably) impelled occasionally to seek for popular applause. The lawyers, time out of mind, are not favourites with the vulgar. It is deemed a cheap sacrifice to offer up a whole tribe of barristers or attorneys to the Idol of Change, because thereby its progress is stayed in matters more nearly affecting the power and place of the politician. The public, it is erroneously supposed, gain all that is taken from the profession. None heeds the burden of taxation which is thrown on the shoulders of the lawyer, nor the diminution of his emoluments.

It cannot be concealed, that a very general opinion prevailed that Lord *Lyndhurst*, during the last two sessions, permitted his noble and learned friend Lord *Brougham* to pursue his measures of law reform far too easily and extensively. Time was, when Lord *Lyndhurst* resisted the wild and sweeping projects of the then Lord Chancellor, — aye, successfully resisted them, notwithstanding all the

strength of government. How different has the case been of late! Bills which, even if they were intrinsically good in principle, required much deliberation on the details, were brought in late in the session, and passed at its close. Being, however, at the best of doubtful utility, and (as the result has shown) of imperfect structure, they should have been referred to a select committee, and afterwards to the judges, before they passed into law. We trust that the next race of legal statesmen will manage these things better.

If a Whig cabinet should be formed, it may be safely predicted, that whatsoever doubts there may be with regard to other legal arrangements, there will be none regarding the person who will fill the office of Attorney-General. The universal expectation of the profession is, that Sir *Thomas Wilde* will re-occupy that post. First, as Solicitor, and afterwards as Attorney-General, he was undoubtedly one of the most able law officers of the last Whig administration. Amongst the first rank of advocates at the bar, he was also a powerful speaker in the senate; and this rare combination will doubtless render him of the first importance in the new arrangements. It was a remarkable saying of Lord *Tenterden*, that “Serjeant *Wilde* had industry enough to ensure success without talent, and talent enough to ensure success without industry.”

It will be recollected, that at the time of the breaking up of the last Whig administration there was no Solicitor-General: Sir *John* (now Lord) *Campbell* had been promoted to the Chancellorship of Ireland, and Sir *Thomas Wilde*, the Solicitor, advanced to the post of Attorney-General. The office of Solicitor was proffered to several members of the bar, amongst others, to the late Mr. *Sutton Sharpe*, but the expectation of a speedy change of ministry rendered the brief tenure of office not worth accepting. A new Solicitor-General, therefore, must be selected. We have heard several names mentioned, but none at present with any approach to certainty.

Neither is there anything to be relied on regarding the Chancellorship of Ireland. We suppose Lord *Campbell* will be entitled to it as of course, if he deems it worthy his acceptance. His lordship long and ably held the office of Attorney-General to the time immediately preceding his elevation to the Irish woolstack.

## POINTS IN COMMON LAW.

ALTERATION OF BILLS OF EXCHANGE  
AND OTHER INSTRUMENTS.

THE last number<sup>a</sup> contained a reference to the recent cases in which unstamped bills of exchange have been received in evidence by the courts of law. The question, when an alteration in a bill of exchange or other instrument may be taken advantage of in an action upon the instrument, is closely connected with the point there discussed, and one upon which the authorities are not easily reconcilable.

The general principle deducible from all the cases is, that any alteration varying the liability of a party to the instrument, made after subscription, and without the authority or consent of the subscriber, furnishes a defence to an action brought upon the altered instrument. It also appears to be an established rule, that where a material alteration appears on the face of an instrument, the party setting up the altered instrument is bound to account for the alteration, if called upon to do so by the issue raised.<sup>b</sup> The point upon which the cases conflict is, as to the manner in which the issue is to be raised.

In *Calvert v. Baker*,<sup>c</sup> the action was by the indorsee v. the acceptor of a bill of exchange; and, under a plea that the defendant did not accept, he was allowed to show that the bill was altered after acceptance, by being made payable at a banker's, and succeeded on this evidence. In *Hemming v. Trenery*,<sup>d</sup> however, which was elaborately argued, where the action was on a guarantee with a plea of non assumpsit, and it was proved that the instrument had been materially interlined after execution, by the insertion of a condition limiting the responsibility of the defendants, the Court of Queen's Bench held, that the defence ought to have been specially pleaded, and that in the absence of such plea the plaintiff was entitled to recover. These somewhat conflicting decisions of two different courts were brought under the consideration of a third, in *Crotty v. Hodges*,<sup>e</sup> where, in an action by an indorsee against an acceptor of a bill of exchange with a plea of non acceptavit, it was proved, that the defendant's name as acceptor had been written, in his presence and by his direction, across a

blank stamped paper, but that a third party, without his knowledge or that of the drawer, afterwards added, "payable at the Bank of England." In this case the Court of Common Pleas avoided the difficulty of deciding between the conflicting cases of *Calvert v. Baker* and *Hemming v. Trenery*, by holding, that the bill in question never existed as an accepted bill, the defendant having authorised the acceptance in a different form. The Court of Exchequer, however, may be said to have overruled its own decision in *Calvert v. Baker*, by subsequent cases. In *Mason v. Bradley*,<sup>f</sup> which was an action against the maker of a joint and several promissory note, with the plea, that defendant did not make the note, it appeared that after defendant subscribed his name, the name of one of the persons who had signed as a co-surety was cut off, but the court held that the defence could not be raised under the plea, and upon that ground decided for the plaintiff. It was there expressly stated, that the case of *Calvert v. Baker* could not be supported, where the alteration was not such as to cause a variation between the statement in the declaration and the instrument produced, or to raise an objection to the stamp on the document. This case was speedily followed by *Davidson v. Cooper*,<sup>g</sup> in the same court, which was an action of assumpsit on a guarantee, with a plea of non assumpsit, and it appeared, that subsequently to the execution of the instrument, a seal was affixed to the defendant's name, so that it purported to be a deed; and it was held, that the defence was sufficient, but that it required to be specially pleaded. The latest decision on the point is that of the Court of Exchequer in *Parry v. Nicholson*,<sup>h</sup> which was an action by an indorsee against the acceptor of a bill of exchange, with a plea of non acceptavit, and upon producing the bill it appeared, that the date had been altered from the 2nd to the 22nd day of March. It was not disputed that an alteration whereby the time of payment is accelerated or postponed avoids the instrument, but it was held, that the defence must be specially pleaded, and the case of *Calvert v. Baker* having been again pressed on the court, *Parke, B.*, observed, that that case could only be supported on the ground that the alteration rendered a new stamp necessary, and that this court concurred in the well-considered judgment of the Queen's Bench in *Hemming v. Trenery*.

The general result of all the reported cases appears to be, that unless the alteration be of a nature to render a fresh stamp necessary, it cannot be taken advantage of, unless specially pleaded.

<sup>a</sup> *Ante*, p. 125.

<sup>b</sup> *Knight v. Clements*, 8 Ad. & El. 215; 3 Nev. & P. 375. *Clifford v. Parker*, 2 M. & Gr. 909, 3 Sc. N. R. 233.

<sup>c</sup> 4 Mees. & W. 417.

<sup>d</sup> 9 Ad. & El. 920; 1 Per. & D. 661.

<sup>e</sup> 4 M. & Gr. 561; 5 Sc. N. R. 221.

<sup>f</sup> 11 Mees. & W. 590.

<sup>g</sup> 11 M. & W. 778.

<sup>h</sup> 13 Mees. & W. 778.



## NOTICES OF NEW BOOKS.

*New Commentaries on the Laws of England, (partly founded on Blackstone.)*  
By HENRY JOHN STEPHEN, Serjeant at Law. Vol. IV. Butterworth, 1845. Pp. 572.

Mr. Serjeant Stephen has now completed his new Commentaries on the Laws of England, by the publication of his fourth volume. Our readers are aware that although this work is *partly*, or we should rather say *mainly*, founded on the text of Sir William Blackstone, the materials are not arranged by the learned Serjeant according to the original Commentaries, and that several new chapters arising out of the modern statutes have been superadded to the work. Instead of the well-known classification of — 1. The rights of persons; 2. The rights of things; 3. Private wrongs; 4. Public wrongs; — Mr. Serjeant Stephen has divided his work into the following books — 1. Personal rights; 2. Rights of property; 3. Rights in private relations; 4. Public rights; 5. Civil injuries; 6. Crimes.

The 4th volume deviates less than any of its predecessors from the design adopted by Blackstone. After concluding the 5th book by treating of civil injuries cognizable in the courts of equity, with their remedies, and of civil injuries proceeding from or affecting the crown, the learned author, in book 6, treats of *crimes* under the following heads: —

1. Of the nature of crimes and their punishments; 2. Of the persons capable of committing crimes; 3. Of principals and accessories. Thus far the two Commentators travel together.

Then, in the 4th chapter, the present author comprises under "Offences against the person," the 14th chapter of Blackstone on Homicide and the 15th on Offences against the Person. We object not to this arrangement, for undoubtedly Homicide may well be included amongst offences against the person.

The 5th chapter of the new, corresponds with the 17th of the old Commentaries, in treating "of Offences against Property;" and it also includes Blackstone's 16th chapter on Offences against Habitations, as Arson, Burglary, &c. This also appears to be an improved classification.

The 6th chapter, treating of Offences against the Government, comprises no less

than four of Blackstone's, namely, the 6th, on Treason; the 7th, on Felonies injurious to the Prerogatives of the Crown; the 8th, on *Præmunire*; and the 9th, on Misprisions and Contempts affecting the Queen and Government. Here, likewise, is an appropriate arrangement, suited to the character of the several offences, for each is a crime against the government.

The 7th chapter answers to the 4th of Blackstone on the Offences against Religion.

The 8th is similar to Blackstone's 5th on Offences against the Law of Nations.

Most of the subsequent chapters resemble the arrangement of the original Commentaries. Thus: —

The 9th, on Offences against Public Justice, corresponds with Blackstone's 10th.

The 10th, of Offences against the Public Peace, with the 11th of Blackstone.

The 11th, on Offences against Public Trade, follows the 12th of the other.

The 12th, on Offences against the Public Health, Police, or Economy, is similar to the 13th of the old Commentaries.

The 13th, on the Means of Preventing Offences, is treated of in the 18th of Blackstone.

The 14th, on Courts of Criminal Jurisdiction, will be found in Blackstone's 19th chapter.

15. Of Summary Conviction: Blackstone, 20.

16. Of Arrests: Blackstone, 21.

17. Of Commitments and Bail: Blackstone, 17.

18. Of the several modes of Prosecution: Blackstone, 23.

19. Of Process and herein of Certiorari: Blackstone, 24.

20. Of Arraignment and its Incidents: Blackstone 25.

21. Of Plea and Issue: Blackstone, 26.

22. Of Trial and Conviction: Blackstone, 27.

23. Of Judgment and its Consequences: Blackstone, 29.

24. Of Reversal of Judgment: Blackstone, 30.

25. Of Reprieve and Pardon: Blackstone, 31.

26. Of Execution: Blackstone, 32.\*

We have, in our notices of the former volumes, stated our views both on the design and execution of this work. Whatever difference of opinion there may be on the peculiar method adopted by the author in quoting the original text in brackets; — in omitting the repealed or obsolete parts; —

\* One of Blackstone's chapters, the 28th, on Benefit of Clergy, is of course omitted.

and incorporating his version of the new law;—there can be no doubt of the great learning and labour which have been bestowed on this edition, or the esteem in which it must be held by the profession.

There is one inconvenience in the mode of making up the several volumes, which (though rather of a mechanical nature) it may be proper to point out. The readers of Blackstone will recollect that each of his volumes comprised one of his four principal divisions. The new commentator having arranged his heads of inquiry into six books, has been compelled to continue part of the matter commenced in one volume in the next, and to forego the advantage of the orderly plan of the original. Thus the last volume, as we have seen, commences with the 14th & 15th chapters of the 5th book, relating to Civil Injuries, and then proceeds with the subject of Crimes. This may appear to be a small matter;—yet to the student, if not the practitioner, it is convenient (especially for facility of reference) to have the whole of each of the great departments of study or research collected together.

In the last chapter, the 27th of Stephen and the 33rd of Blackstone, we find a brief chronicle of the rise, progress, and gradual improvement of the laws of England. It will interest our readers to peruse the rapid summary, by the new commentator, of the alterations effected since the publication of Blackstone's work, that is, during the last 80 years. Mr. Serjeant Stephen thus continues the summary :—

“ During the period of eighty years which has elapsed since the publication of Blackstone's Commentaries, the most conspicuous event in our legislative annals has been the act for the union of Great Britain and Ireland,—a measure recommended by the wisest and most unquestionable policy, to two nations so nearly connected by their geographical position and their common subjection to the same crown, and so long already united in language, in civil institutions, and in arms. We may also single out for particular enumeration the act to amend the representation of the people, and that to regulate municipal corporations; two statutes of transcendent importance, as having been designed to extinguish, and having in fact materially abated, the indirect influence immemorially exercised by wealth and power, in our general and local institutions.

“ Of the other measures of importance those relating to the Church may next attract our attention; and here we may notice the repeal of the Test and Corporation Acts, by which dissenters in general were relieved from all restraints that had before excluded them from

free participation with their fellow subjects, in political rights; the Catholic Emancipation Act, by which the same benefit was bestowed on those who profess the faith of the Church of Rome; the many other acts for relief of the same persons from all forfeitures and penalties to which they had before been liable in respect of their religious tenets; the act for commutation of tithes; for reform of the law relative to pluralities and residence; for the better application of cathedral revenues; and for the extension of the places of worship belonging to the established Church.

“ On the merits of many of these measures, indeed, opinions have been much divided, as will always be the case upon questions connected with politics or religion; but a more unmixt applause may reasonably be claimed for the improvements that have been introduced in relation to our social economy, — for the acts relative to trade and navigation, to banking, to registration, to lunatic asylums and to gaols, and to the general principle of those connected with the management of the poor.

“ It is however in regard to the rights of property and the administration of justice, that the genius of reform has latterly displayed its chief activity, and that its achievements have been, upon the whole, the most triumphant. It would be impossible, without a tedious minuteness of detail, to recount the whole of these. But, under the first head, our notice is particularly due to the improvements which have taken place in the law of descent or inheritance, of prescription, of dower, and of the limitation of the time for recovering real estate; to the better regulation of wills and testaments; to the deliverance of entails and the estates of married women from the thralldom of expensive and cumbrous forms of conveyance, and the substitution of simpler methods; and to the provisions for facilitating the relief of copyhold estates from the burthens of an oppressive tenure, and their conversion into freehold.

“ Under the reforms in the administration of civil justice may be particularized the better regulation of juries; the abolition of the separate judicature of Wales; the improved arrangement of the terms, and of the proceedings by writ of error; the abolition of the antiquated forms of real actions, which had survived the lapse of ages only to subserve the purposes of chicanery; the provision for speedy judgment and execution, upon verdicts; the new improvements in the proceedings by ejectment, prohibition, and mandamus; the powers conferred on the courts of common law to give relief to parties exposed to adverse claims, and to order the examination of witnesses on interrogatories, and commissions for examination of witnesses abroad; the many important and elaborate improvements in the forms of process and pleading, both as regards the courts of common law and of equity, and in the general practice of those courts; and the establishment of the new courts of bankruptcy and insolvency, of the courts of the vice-chan-

cellors in equity, and of the judicial committee of the privy council.

"And lastly, with respect to the administration of criminal justice, we may refer to the salutary repeal of many antiquated statutes; the consolidation of the law relating to most of the principal offences; the abolition of the benefit of clergy, and of appeals; the better regulation of the law of principal and accessory, of commitment and bail, and of venue; the introduction of a variety of provisions tending to greater simplicity and uniformity in the course of proceeding, and its deliverance from technical difficulties; the allowance of counsel for the prisoner, in cases of felony; and the remarkable mitigation which has taken place in the ancient severity of our criminal punishments.

"[Thus, therefore, for the amusement and instruction of the student, have been delineated some rude outlines of a plan for the history of our laws and liberties, from their first rise and gradual progress among our British and Saxon ancestors till their total eclipse at the Norman conquest, from which they have gradually emerged and risen to the perfection they now enjoy, at different periods of time. We have seen in the course of our inquiries in this and the former volumes, that the fundamental maxims and rules of the law] which regard the rights of each member of the community, whether considered in an individual or relative capacity, — the private injuries that may be offered to these, — [and the crimes which affect the public, — have been and are every day improving, and are now fraught with the accumulated wisdom of ages;] that the forms of administering justice have also, particularly in our own times, received the assiduous care of the cultivators of legal science; [that our religious liberties were fully established at the Reformation; but that the recovery of our civil and political liberties was a work of longer time, they not being thoroughly and completely regained till after the restoration of King Charles, nor fully and explicitly acknowledged and defined till the era of the happy revolution. Of a constitution so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise which is justly and severely its due; the thorough and attentive contemplation of it will furnish its best panegyric.]"

"The admiration that it is calculated to inspire should lead to some reflection on the duties which attach to citizens born to so noble an inheritance. It was the stern task of our forefathers, to struggle against the tyrannical pretensions of regal power: to us, the course of events appears to have assigned the opposite care, of holding in check the aggressions of popular license, and maintaining inviolate the just claims of the prerogative. But in a gene-

ral view we have only to pursue the same path that has been trodden before us — to carry on the great work of securing to each individual of the community as large a portion of his natural freedom as is consistent with the organization of society, and to increase to the highest degree that the order of divine providence permits, the benefits of his civil condition. A clearer perception of the true nature of this enterprise, of the vast results to which it tends, and of the obligations by which we are bound to its advancement, has been bestowed on the present generation than on any of its predecessors. May it not fail also to recollect, amidst the zeal inspired by such considerations, that the desire for social improvement degenerates, if not duly regulated, into a mere thirst for change; — that the fluctuation of the law is itself a considerable evil; — and that however important may be the redress of its defects, we have a still dearer interest in the conservation of its existing excellencies."

In this last sentiment we heartily concur, and trust that those who are thirsting for still further changes in the law, will listen to the admonition here offered to their consideration.

#### LORD CAMPBELL'S NEW WORK.

WE have provided ourselves with a copy of Lord Campbell's "*Lives of the Chancellors*," just published. It begins with the rudiments of the Monarchy, with which the office of Chancellor is coeval, and traces the history of the persons who have successively filled it, to the Revolution of 1688. This constitutes the first series of the work, and occupies three handsome octavo volumes. The remainder, which his lordship is engaged in preparing, will extend to two volumes, and complete the narrative, bringing it down to the time of George IV. We have been able to read only the first chapter of this important and elaborate performance, — the "INTRODUCTION," — being a sketch of the office of Chancellor, its origin, functions, and jurisdiction. This we have no hesitation in pronouncing to be one of the most profound, judicious, and entertaining essays that have ever issued from the pen of an English lawyer. We shall hereafter examine the whole work in detail; in the mean time we give, from the Introduction, an extract which may serve to show that this book is adapted to the general reader, as well as to those who desire to extend the range of their legal and constitutional information. After stating that when, on the occasion of a new reign, or of a change

<sup>b</sup> The passages in brackets are quoted from Blackstone. This extract will show the manner in which the author has interwoven his own remarks with the commentator's text.

in the royal arms or style, "an order is made by the Sovereign in council for using a new Great Seal, the old one is publicly broken, and the fragments become the fee of the Chancellor."—Lord Campbell has the following curious anecdote respecting a contest for these interesting "fragments," between two living public characters, whose fame will not die with the age in which they flourished:—

"This being the general rule, an amicable contest, *honoris causa*, arose upon the subject, between two of the most distinguished men who have ever held the office. Lord Lyndhurst was Chancellor on the accession of William IV., when, by an order in council, a new Great Seal was ordered to be prepared by his Majesty's chief engraver,<sup>a</sup> but when it was finished and an order made for using it,<sup>b</sup> Lord Brougham was Chancellor. Lord Lyndhurst claimed the old Great Seal, on the ground that the transaction must be referred back to the date of the first order, and that the fruit must therefore be considered as having fallen in his time; while Lord Brougham insisted that the point of time to be regarded was the moment when the old Great Seal ceased to be the "*clavis regni*," and that there was no exception to the general rule. The matter being submitted to the King, as supreme judge in such cases, his Majesty equitably adjudged that the old Great Seal should be divided between the two noble and learned litigants, and as it consisted of two parts, for making an impression on both sides of the wax appended to letters patent, — one representing the Sovereign on the throne, and the other on horseback, — the destiny of the two parts respectively should be determined by lot. His Majesty's judgment was much applauded, and he graciously ordered each part to be set in a splendid silver salver, with appropriate devices and ornaments, which he presented to the late and present keeper of his conscience, as a mark of his personal respect for them. The ceremony of breaking or 'damasking' the old Great Seal consists in the Sovereign giving it a gentle tap with a hammer, after which it is supposed to be broken, and has lost all its virtue."

This story reminds us of a kindred anecdote told of Lord Chancellor Hardwicke. It appears that when that great judge held the Great Seal, the custom was (we know not whether it has ceased in the present economical age) to present him with a new purse for holding the seals every new year. The old one of course became the

Chancellor's perquisite, and was preserved as a family heir-loom. Now, Lord Hardwicke had held office for precisely twenty years, and consequently had twenty of these interesting monuments of his long and well-deserved professional supremacy. Lady Hardwicke, celebrated in her day for housewife-like qualities, had them converted into a counterpane, which we remember to have seen when "we were a boy," in the state bedroom, at Wimple, — where it constitutes one of the lions of the proudest collection of legal associations to be found in any residence in the kingdom. The story of the counterpane and that of the sigillian fragments are of a piece, and ought to stand side by side.

## LAW OF ATTORNEYS.

### TRIAL OF FACTS BY AFFIDAVIT.—ATTORNEY'S REMEDY FOR COSTS.

WE should recommend an attentive examination of the cases in which the courts of law determine matters of fact upon affidavit, to all who desire to see this branch of jurisdiction extended and the province of a jury further encroached upon. The insufficiency of the machinery employed for the ascertainment of truth, when the mode of procedure is by affidavit, is tolerably manifest if, as we apprehend, the following propositions are generally correct in respect of this mode of proceeding:—

1st, That no person, however competent and well acquainted with facts, can, if unwilling, be compelled to make an affidavit as to the facts within his knowledge.

2ndly, That no person who has made an affidavit is allowed, even if so disposed, by a supplemental affidavit to add to, explain, or qualify, any facts already deposed to by him, and

3rdly, That no person deposing to facts by affidavit is subject to cross-examination, or any equivalent test of truth.

As may be supposed, the results of a system so clumsy and imperfect, are in the highest degree unsatisfactory. This has been exemplified in a case in the Court of Common Pleas, lately reported,<sup>a</sup> where an attorney, who had conducted an action to a successful termination, was cheated not only out of the remuneration to which he was justly entitled for his services; but also, out of the monies which he had dis-

<sup>a</sup> 4th August, 1830.

<sup>b</sup> 31st August, 1831. According to this, it took upwards of a year to complete the manufacture of the new Great Seal, during which period the seal of a former reign, that of George IV., must have been used.

<sup>a</sup> *Clarke v. Smith*, 6 Man. & G. 1051.

bursed on behalf of his client, in the prosecution of an action to recover compensation for a personal wrong.

The action was brought for an assault, and the plaintiff obtained a verdict for 40s. In the following term, the plaintiff's attorney, in due course, taxed his costs and signed judgment for 78*l.* 5*s.* 6*d.*, being the amount of damages and costs. In the same term a rule was obtained, on the part of the defendant, calling upon the plaintiff's attorney to show cause, why the judgment should not be set aside, with costs to be paid by the plaintiff's attorney. This rule was obtained upon affidavits, stating, that shortly after the trial and before judgment was signed, the plaintiff and defendant met and agreed that the latter should pay the former fifty guineas for damages and costs, which sum was accordingly paid, and the plaintiff thereupon signed a receipt for the fifty guineas, and executed a release of the action. In showing cause against the rule, an affidavit was produced made by the plaintiff, in which he deposed, that although he gave a receipt for 52*l.* 10*s.*, he had in fact only received 10*l.*, and that he acted under the impression that his attorney would still be entitled to have recourse to the defendant for his costs.

In the course of the argument, it was admitted to be an established principle, that the parties to an action may enter into a compromise, and settle the action in the absence of their attorneys, for, as observed by *Parke, B.*, in *Jordan v. Hunt*,<sup>b</sup> "it is the client's action and not the attorney's; but it was also conceded, that the courts would not give effect to such an arrangement, if it clearly appeared that the plaintiff and defendant had colluded and conspired together to defraud the attorney. The question in the principal case was, whether it was shown affirmatively by the affidavits, that the settlement was effected with a view of cheating the attorney of his costs?

In reference to this question the court observed, that the defendant expressly denied collusion, and that the affidavits were contradictory and left it quite uncertain, whether 10*l.* or 52*l.* 10*s.* had been received by the plaintiff. *Tindal, C. J.*, said, "Had we been satisfied that the plaintiff accepted the sum of 10*l.* in discharge of a much larger demand, we might have arrived at a different conclusion to that to which we now come, under an impression that the payment amounted to 52*l.* 10*s.* I think the plaintiff's attorney has failed to make out a case for interference with the right of the parties to compromise the action, and that the judgment signed after notice of the release must be set aside."

This case furnishes one of many instances, where the party whose property or rights is substantially the subject of litigation, is precluded by an inefficient system of procedure from furnishing the court

with proper materials for coming to a correct conclusion. Had the parties to the arrangement, which was the subject of consideration, been forced to submit to a *viva voce* examination, and a cross examination, the fact which the court was of opinion was so material, and which the affidavits left "quite uncertain," namely—the amount paid by the defendant to the plaintiff in discharge of the action—would be ascertained beyond doubt. Indeed the nature of the transaction seemed tolerably transparent, even in the absence of these sometimes indispensable tests of truth. As observed by the learned reporter in his notes on the case,<sup>c</sup> the damages were merely nominal, and there was nothing to compromise but the costs of the plaintiff's attorney, who was no party to the compromise. There was no necessity for a release, except for the purpose of getting rid of the attorney's lien, and the arrangement was nothing more nor less than the sharing by two parties of property belonging to a third.

## PROPOSED AMENDMENT OF THE LAW OF BANKRUPTCY AND INSOLVENCY.

THE elaborate report made to the Lord Chancellor by Mr. Serjeant Manning, contains many valuable materials for the consideration of those who are engaged in the proposed amendment, if not the consolidation, of the Law of Bankruptcy and Insolvency. The learned serjeant gives a brief and instructive account of the progress of the bankrupt law, from the time when it was in the highest degree severe until it became much too lenient.

"For nearly two centuries after the enacting of the first English bankrupt law the debtor, though stripped of his real and personal estate, was incapacitated from acquiring property, and received from the legislature no protection whatever against perpetual imprisonment. He could obtain exemption from imprisonment, or the slightest degree of security in the acquisition of property, only by procuring from his creditors individually a release or discharge from their claims, or such portion of their claims as had not been satisfied by the compulsory process of the bankrupt law. The discharge was not completely effected unless all the creditors concurred in executing it. This, where the creditors were numerous, was always difficult, and sometimes impossible. To the

<sup>b</sup> 3 Dowl. P. C. 666.

<sup>c</sup> 6 M. & G. 1051.

extent, however, to which a release was executed, it operated as an entire extinction of the rights of the executing creditors, as by a common law maxim the right to a personal action cannot be *temporarily suspended* by the act of the party. Every attempt to lessen the inconveniences sustained by the debtor, destroyed the rights of the creditor for ever.

"In 1705 the legislature interfered to relieve bankrupts from this difficulty; and it did so by transferring the power of discharging the bankrupt from the creditors to the commissioners, to whom the power previously exercised by the creditors individually was now intrusted, subject to certain restrictions, which did not, however, affect the absolute nature of the discharge when obtained; and from this period, as before, no relief was obtained by the debtor in respect of present or of future property, except through a process by which all the rights of the creditor became extinguished.

"In 1732 the legislature appears to have considered that injustice had been done to creditors in taking from them all remedy for the recovery of that portion of their claims which should be left unsatisfied by the dividends under the bankruptcy, without allowing to them any power of assenting to or dissenting from the release of the debtor from his engagements. By the alteration made in that year by the 5 Geo. 2, c. 30, the power of releasing the bankrupt was transferred from the commissioners to the creditors, to be exercised by them, not individually, as before 1705, but collectively, the power being given to four-fifths of the creditors in number and value who had proved debts under the commission. This portion of the creditors, by signing the certificate, discharged the bankrupt from all liability to themselves and to the residue of his creditors, as well those who had proved debts under the commission as those who had not. The power thus restored to the creditors left them only two alternatives,—one that of leaving the bankrupt in a state of utter destitution, and subject to perpetual imprisonment,—the other, that of assenting to an unqualified and irretrievable abandonment of all their rights as creditors. An observation made by Sir Samuel Romilly thus describes the false position in which the creditors of a bankrupt were placed: 'A creditor cannot by signing the certificate afford a bankrupt a shield against oppression without resigning all claim to receive satisfaction out of the bankrupt's future opulence.'

"The bankrupt obtained this absolute release by means of an instrument in which the creditors signified their assent to his discharge, and in which the commissioners certified that the bankrupt had submitted to their authority and had conformed himself to the provisions of the statutes in the different stages of the proceedings under the commission, and that the creditors who had so signified their assent to the bankrupt's discharge constituted four-fifths in number and in value of the creditors who had proved debts under the commission.

"The matters certified by the commissioners

had no connexion with the conduct pursued by the bankrupt *previously* to the issuing of the commission. Neither the reckless extravagance by which insolvency may have been occasioned, nor the dishonesty and fraud by which an equal distribution of the assets may have been rendered all but impossible, could form a subject of inquiry. The commissioners were bound to certify the conformity of the bankrupt where he went through the prescribed forms and gave up to his creditors any remnant of property which he may not have had the means of aliening or concealing. With death was the punishment of frauds committed *after* the issuing of the commission, the most complete immunity was held out to frauds equally injurious to the creditors consummated *before* the bankruptcy. The only corrective, real or apparent, of this indemnity in respect of offences preceding and perhaps causing the bankruptcy, was the power of the creditors to withhold their signatures to the consent contained in the certificate. But it rarely happened that the signatures of the creditors were affixed or withheld with reference to the prior conduct of the bankrupt. The discharge was granted, in cases of the grossest misconduct, from motives of humanity, or to escape from importunity, and often as the price of some unjust advantage obtained by the signing creditor; and it was sometimes refused from feelings of personal hostility, and not unfrequently because the bankrupt would not be a party to a crime."

The learned serjeant then proceeds to state the difference in the position of a *non-trading insolvent* from a bankrupt trader, and enters at large into the question of the liability of a bankrupt or insolvent to pay his debts out of after-acquired property.

"Whilst the legislature required that the bankrupt who had not obtained his discharge from all liability in respect of his debts should remain incapable of holding any property whatever, and empowered his creditors to seize upon anything which his industry had acquired, and upon which the existence of himself and his family might depend, and invited those creditors to appropriate to themselves any goods obtained by the bankrupt on credit from persons in utter ignorance of his real position, and without the means of ascertaining it, a totally different course was pursued with regard to imprisoned debtors, who, from not being traders, or from not having creditors to a certain amount, were not amenable to the bankrupt laws.

"The discharged insolvent is not told that his former liabilities have ceased to exist, and that having repaid a portion of the money which he has borrowed, or paid part of the price of goods which he has received, he is under no obligation to pay the remainder. The Insolvent Debtors' Court protects the debtor from any molestation in his efforts for his own subsistence and for the support and the education of his family. It enables his friends to assist him

law have pursued on this point the extremes of lenity and of severity. By the Roman law, as it existed before the introduction of the *cessio bonorum*, the debtor, if he remained insolvent, was obliged to dedicate the whole labour of his life to the benefit of his creditor, of whom he was in some cases virtually, in others actually, the slave. By the English law, the bankrupt may, after he has obtained his certificate, inherit or in any other way acquire a fortune, and may live in the enjoyment of every luxury, without affording to the creditors whom he has reduced from affluence to destitution, any the slightest assistance."

Justice to the creditor, and a humane consideration of the position of the debtor, appear to require the adoption of some course between these extremes.

"The honest but unfortunate insolvent ought not to be interrupted in his exertions to regain an honest livelihood, nor should the law absolve misconduct and improvidence from all participation in the inconvenience which they have inflicted upon others; when these have occurred the debtor should be liable to contribute towards the restitution of that which he has thus culpably caused his creditors to lose; and in every case where good fortune, from whatever source, has reached the debtor, some part of his surplus means should be dedicated to the satisfaction of his former liabilities.

"One highly important result from such an alteration would be, that the fraudulent compositions which are so common and so profitable at the present day would cease to be practicable. It is, perhaps, hardly possible to find a merchant of any experience who has not known several such transactions. A debtor calls his creditors together, and tells them, as the fact probably is, that he is insolvent, and he offers a certain dividend. The creditors suspect that more ought to be forthcoming, but the debtor has been too wary to enable them to prove it. The creditors feel that if they let the business go to a bankruptcy they must be much longer without any dividend at all, and that the heavy expenses of the bankruptcy will come out of the estate. The matter ends by the composition being acceded to; and the dishonest debtor is not merely released from the payment of just debts, but is positively enriched by the difference between the dividend which he pays and the dividend which his estate could have afforded. If he pays 10s. in the pound, when his estate could have afforded 15s., he makes an actual profit, at the expense of his creditors, of 25 per cent. upon the amount of all his liabilities, or 1,000*l.* clear upon every 4,000*l.* that he owes. This has sometimes been done by the same debtor two or three times. Such a person, it is true, would no longer receive credit in trade; but instances have occurred when the amount realised has been sufficient to enable the fraudulent debtor to pay ready money for everything, and thus to come into the market on the most favourable terms. But

supposing after-acquired property to be made liable, a proceeding of this kind will be nearly impracticable. The assets which have been screened from the view of the creditors at one period will become available to them at another; and there will no longer be any ground for the observation attributed to one of our judges, that our laws are such that a tradesman may be supposed to owe it as a duty to his family to fail twice in his life.

"Another important result to be anticipated from an alteration of the present system is, that imprudence of every description would be checked. At present, the merchant who speculates beyond his means, takes to himself the profits, if his speculation be successful, but if the speculation prove to be a ruinous one, he leaves the creditors to divide the loss. The speculator who has compelled his creditors to be the sharers of his bad fortune should be obliged to make them some restitution out of his good fortune. But cases in which quite the reverse of this has occurred are familiar to every man of business,—cases where a man, who has occasioned heavy losses to a numerous body of creditors, having afterwards realised a fortune by more successful speculations, has lived in splendour, without deigning to add one shilling to the trifling dividend which those creditors have received. The man who is living beyond his means would see reason to check his extravagance, if he knew that the creditors, whose money, and not his own, he is, in truth, spending, would have legal claims upon his future property.

"Unless the law had brought down the moral sense of the community to the standard of its own provisions, it would hardly have been a question at the present day, whether, in the case of a man who heretofore borrowed 1,000*l.*, and has now ample means of paying twenty times the amount, there is any injustice in refusing to absolve him from all liability in respect of that loan, upon the ground that at some intermediate period he had happened not to have the means of discharging the debt; and I cannot help thinking that much would be done towards restoring that moral sense to a healthy state, by making the provisions of the law more consistent than they now are, with the rules of natural justice."

## PARLIAMENTARY RETURNS.

### NEW PLACES CREATED AND APPOINTMENTS MADE,

Since the 1st of September, 1841.

[Omitting such as are under £100.]

Court of Equity.

Under 5 Vict. c. 5.<sup>a</sup>

Vice-Chancellor:

The Right Hon. Sir James Lewis Knight Bruce, salary 5,000*l.*

The Right Hon. Sir James Wigram, 5,000*l.*

<sup>a</sup> The appointment of the two Vice-Chancel-

One Secretary to each Vice-Chancellor :  
Lewis Bruce Knight Bruce, 300*l*.  
Charles Robert Mitchell Jackson, 300*l*.

One Usher to each Vice-Chancellor :  
Charles Carmichael, 200*l*.  
J. F. Buccleugh, 200*l*.

One Trainbearer to each Vice-Chancellor :  
Joseph Dobbs Wildsmith, 100*l*.  
George Atchison, 100*l*.

One Master in Ordinary :  
Richard Richards,<sup>b</sup> 2,500*l*.

One Chief Clerk ditto :  
John Philpot, 1,000*l*.

One Junior or Copying Clerk ditto :  
William Thomson, 150*l*.

Four Registrars :  
Francis H. Davis, 1,800*l*.  
Hugh Wood,<sup>c</sup> 1,500*l*.  
Cecil Monro, 1,250*l*.  
Edward D. Colville, jun., 1,250*l*.

Eight Registrar's Clerks :  
T. Ellis Adlington,<sup>d</sup> 600*l*.  
Francis Henry Rich, 600*l*.  
Frank Milne,<sup>e</sup> 400*l*.  
Ralph Disraeli, 400*l*.  
Thomas John Anderson, 300*l*.  
Paul John King, 300*l*.  
Pearce William Rogers, 300*l*.  
A. H. Shadwell, 300*l*.

*Under 3 & 4 Vict. c. 94.*

Accountant-General's Clerks :<sup>f</sup>  
20th Clerk, Charles Henry Price, 120*l*.  
21st Clerk, Walter S. Mortimer, 120*l*.  
22nd Clerk, James Walker, 120*l*.  
23rd Clerk, Joseph N. Dalton, 100*l*.  
24th Clerk, John Hair, 100*l*.  
25th Clerk, Robert Crosby, 100*l*.  
26th Clerk, Frederick James Norton, 100*l*.

lors and their officers took place under the act 5 Vict. c. 5, in consequence of the abolition of the equity jurisdiction of the Court of Exchequer.

That act abolished the offices of 34 persons, who received fees to the amount of 11,000*l* a year.

<sup>b</sup> The appointment of Master Richards (previously Accountant-General of the Court of Exchequer) and of his clerks, took place in consequence of the abolition of the equity jurisdiction of the Court of Exchequer.

<sup>c</sup> Mr. Davis and Mr. Wood were previously sworn clerks of the Court of Exchequer.

<sup>d</sup> Mr. Adlington was previously a sworn clerk of the Court of Exchequer.

<sup>e</sup> Mr. Rich and Mr. Milne were previously side clerks of the Court of Exchequer.

<sup>f</sup> The appointment of additional clerks in the office of the Accountant-General has been rendered necessary by the transfer of the equity jurisdiction of the Court of Exchequer to the Court of Chancery.

*Under 5 Vict. c. 5.*

Temporary clerks in the office of the Clerks of Accounts :<sup>g</sup>

Henry Cooper, 100*l*.  
Henry James Francis, 100*l*.  
James Charles Bolton, 100*l*.  
Henry Johnson, 100*l*.

Clerk of Enrolments :<sup>h</sup>  
David Drew, 1,200*l*.

His clerks :

Joseph Leaver, 300*l*.  
Francis Woodall, 300*l*.  
Frederick Woodall, 150*l*.

Clerks of Records and Writs :

Frederick Bedwell, 1,200*l*.  
John Alex. Berrey, 1,200*l*.  
John Veal, 1,200*l*.  
Seth Charles Ward, 1,200*l*.

Their clerks—Mr. Bedwell's clerks :

Henry Wass Wright, 350*l*.  
George Slade Ash, 250*l*.  
Frederick Jacob Wright, 150*l*.

Mr. Berrey's clerks :

John Miller, 350*l*.  
John Bowyer, 250*l*.  
Richard Rutson, 150*l*.

Mr. Veal's clerks :

George Papps, 350*l*.  
T. Wolfe Braithwaith, 250*l*.  
Michael Green, 150*l*.

Mr. Ward's clerks :

John Mumbray, 350*l*.  
Thomas Hunt, 250*l*.  
William Henry Lording, 150*l*.

Their office-keeper :

Henry Leander, 180*l*.

Taxing Masters :

H. R. Baines, 2,000*l*.  
R. B. Follett, 2,000*l*.  
George Gatty, 2,000*l*.  
Philip Martineau, 2,000*l*.  
Richard Mills, 2,000*l*.  
John Wainwright, 2,000*l*.

<sup>g</sup> The appointment of these temporary clerks had been rendered necessary by the transfer of the equity business of the Court of Exchequer to the Court of Chancery.

<sup>h</sup> The appointment of the clerk of enrolments, the clerks of record and writs and taxing masters, and of their respective clerks, &c., took place under the act for abolishing certain offices of the High Court of Chancery in England, which abolished the offices of 43 persons, whose receipts for fees exceeded 77,000*l* a year.

The annual expense of the establishment in connexion with this and the other appointments under the 5 & 6 Vict. c. 103, is 1,931*l* 11*s* 7*d*. This amount includes the total expenses for stationery, coals, candles, &c. in the offices of the clerk of enrolments, clerks of record and writs, and taxing masters.

The annual expense of the new establishment, including salaries, amounts to 25,611*l* 11*s* 7*d*.



## Their clerks :

Richard Bacon, 250*l*.  
 James Bowyer, 250*l*.  
 Henry Mills, 250*l*.  
 Andrew Murray, 250*l*.  
 Frederick Norton, 250*l*.  
 William Garland, 250*l*.

*Under 5 & 6 Vict. c. 84.*

## Commissioners in Lunacy :

Francis Barlow, 2,000*l*.  
 Edward Winslow, 2,000*l*.

## Their clerks :

Henry Enfield, 800*l*.  
 Joseph Elmer, 350*l*.<sup>1</sup>  
 Charles Harman, 250*l*.  
 John Stewart, 250*l*.  
 Edward Henry Hunt, 150*l*.  
 C. J. Durham, 120*l*.

## Secretary of Lunatics :

Thomas Cartledge, 800*l*.

## His clerks :

Charles Thomas Smith, 250*l*.  
 William Robert Smith, 230*l*.  
 William Gill, 150*l*.

*I. J. Johnson,*

Solicitor to the Suitors' Fund.

## Court of Exchequer.

On or about the 11th day January 1843, two additional clerks were appointed to the office of Pleas of the Court of Exchequer, under the 12th section of the act of 1 Vict. c. 30, and with the sanction and approval of the Lords Commissioners of her Majesty's Treasury.

The persons appointed were Edward Thomas Dax, with a salary of 150*l*., and Stephen Richards, the younger, with a salary of 120*l*. per annum.

There is not any annual expense on the establishment in connexion with such appointments, except the two annual salaries.

These are the only new places created or made in the plea side of the Court of Exchequer since the 1st day of September 1841.

T. DAX,	} Masters of the Court of Ex- chequer.
EDMD. WALKER,	
W. H. WALTON,	
EDWD. BENNET,	
SA. DARE.	

<sup>1</sup> By the operation of the 5 & 6 Vict. c. 84, the offices of five commissioners in London, and of many commissioners in the country, were abolished.

Annual expense, 1,147*l*. 16*s*. 2*d*. This amount includes travelling expenses, rent, and office expenses for stationery, coals, office-keeper, &c. &c.

<sup>1</sup> The secretary of lunatics and his clerks held their office before the passing of the 5 & 6 Vict. c. 84, by which act regulations were made for the conduct of the business of the office.

Annual expense, 91*l*. 4*s*. 2*d*. Including stationery, coals, candles, laundress, &c. &c.

## Queen's Remembrancer.

George Richard Thomas Fenner, clerk as entering registrar, 300*l*.

John Tickney,<sup>1</sup> bagbearer or court clerk, 100*l*.

Charles Cummins, first clerk in revenue or court department, 350*l*.

W. Henry Hobbs, second ditto, 300*l*.

William Kelly, third ditto, 250*l*.

Francis Allin, writing clerk in same department, 100*l*.

Richard Coates,<sup>1</sup> ditto, 100*l*.

John Raven,<sup>2</sup> writing clerk, 100*l*.

Estimated annual expenses of the establishment in connexion with such appointments, 1,600*l*.

*H. W. Vincent,*  
 Queen's Remembrancer.

## Court of Bankruptcy.

*Appointed under 5 & 6 Vict. c. 122.*

## Commissioners in the country districts :

J. Balguy, 1,800*l*.

E. Ludlow, 1,800*l*.

W. Skirrow, 1,800*l*.

H. Stephen, 1,800*l*.

N. Ellison, 1,800*l*.

M. J. West, 1,800*l*.

E. R. Daniell, 1,800*l*.

W. Jemmett, 1,800*l*.

C. Phillips, 1,800*l*.

<sup>1</sup> The offices with the corresponding duties to those of these persons were abolished by the act of 5 & 6 Vict. c. 86, and re-created for the same and other official objects, under the provisions of the said act, with the salaries assigned to them, having previously enjoyed fees to a much larger amount. They are filled by the same persons, and can scarcely be called new appointments.

<sup>1</sup> These five offices replace under the Queen's Remembrancer the ancient machinery of the eight sworn clerks and 24 side clerks of the revenue side of the Court of Exchequer, (abolished by 5 & 6 Vict. c. 86,) which sworn and side clerks were in the receipt of fees to the amount of several thousands per annum. The three principal ones are filled by the persons who had acted as agents for the said sworn and side clerks, and had been engaged for many years in the transaction of the business, employing Mr. Allin and others in copying.

<sup>2</sup> This appointment was found necessary on account of the great amount of writing in the department of sheriffs, estreats, &c. organised in 1835 upon the abolition of 24 Exchequer offices in the department of Lord Treasurer's remembrancer, clerk of the pipe, foreign ap-poser, &c. &c. in that year.

<sup>2</sup> The salaries were given by the act 5 & 6 Vict. c. 122, which abolished the country commissioners acting under the old system, whose fees, including their travelling expenses, amounted upon an average to the annual sum of between 50,000*l*. and 60,000*l*.

M. B. Bere, 1,800*l*.  
 R. Stevensop, 1,800*l*.  
 W. F. Boteler, 1,800*l*.

5 & 6 Vict. c. 122, and 7 & 8 Vict. c. 96.

Registrars in the country districts :

F. Curzon, 600*l*.  
 R. E. Wilson, 600*l*.  
 C. Thompson, 600*l*.  
 J. Wilmot, 600*l*.  
 H. Gordon, 600*l*.  
 C. Waterfield, 600*l*.  
 S. Payne, 600*l*.  
 J. Carew, 600*l*.  
 J. Pollock, 600*l*.  
 W. S. Gibson, 600*l*.  
 R. T. S. Tuckett, 600*l*.  
 J. Y. Lee, 600*l*.

7 & 8 Vict. c. 96.

Taxing Master :

D. Richardson, 1,200*l*.

*Under the Lord Chancellor's order.*

Clerks in the Accountant's office :

A. Rivers, 400*l*.  
 S. Ewen, 400*l*.  
 S. Joseph, 280*l*.  
 W. Evans, 250*l*.  
 S. Bolton, 250*l*.  
 D. Stewart, 220*l*.  
 J. Grange, 220*l*.  
 S. Price, 200*l*.  
 V. Beauchamp, 180*l*.  
 J. Roby, 150*l*.  
 W. Musgrave, 120*l*.

Clerks in the chief registrar's office :

E. Smith, 150*l*.  
 E. Irons, 120*l*.  
 F. Ross, 200*l*.

Estimated annual expense of the District Courts  
 of Bankruptcy :

Courts at Liverpool, 380*l*.  
 — Newcastle, 129*l*.  
 — Manchester, 330*l*.  
 — Birmingham, 401*l*.  
 — Exeter, 110*l*.  
 — Bristol, 300*l*.  
 — Leeds, 240*l*.

*Richard Clarke,*  
 Secretary of Bankrupts.

## REGISTRATION OF ATTORNEYS.

It may be proper to remind some practitioners, that although the regular time for taking out their annual certificates expired on Tuesday the 16th instant, yet, that if taken out before the 1st January, their names will appear in the Law List. This is an object with many persons, and it is material to inform them, that in order to obtain the registrars' certificate on the 31st December, they should leave their declarations at the Law Society on the 24th.

A large number must be in this situation, for we understand that at present the certificates issued fall very short of the total number of last year, which was 9,890 and upwards.

We hear that some instances have occurred of persons paying the money to the Receiver at the Stamp Office, but for want of the registrars' certificate of their being on the roll, the stamped certificate, according to the provisions of the act, cannot be obtained. In these cases, when the parties come in the following year for the registrars' certificate, it cannot be granted without a judges' order, for the act prohibits the registrar from issuing his certificate to any person who has neglected to take out a stamped certificate according to law, that is, for one whole year.

## NOTES OF THE WEEK.

### QUEEN'S COUNSEL AND BENCHERS.

WE have not yet heard whether the question at the Inner Temple of admitting one of the new Queen's counsel to the office of benchers has been determined; but if not, we trust that the good feeling of the ensuing Christmas will overcome the difficulty, and that by next term the admission will take place. It seems to be the unanimous opinion of the profession, that both on the ground of usage and propriety, when members of the bar have been elevated by the highest dignitaries of the law to the rank of her Majesty's counsel, they ought not to be excluded from the benchers' table. Such an exclusion is not only an injury to the individual, but a reflection on those who deem him worthy of the rank he holds in the profession.

### NEW SERJEANTS.

Charles Wilkins, Esq., and Edwin Sandys Bain, Esq., both of the Northern Circuit, have taken the degree of Serjeant-at-law. The former was called to the bar by the society of the Inner Temple in Trinity Term, 1835, and the latter by the Middle Temple in Trinity Term, 1829.

### ACCOUNTANT IN BANKRUPTCY.

Basil Montagu, Esq., the accountant in bankruptcy, has retired on a pension, and Richard Clarke, Esq., the Lord Chancellor's secretary of bankrupts, succeeds him.

### NEW BANKRUPTCY REGISTRARS.

Mr. Barnes, one of the Registrars of the Court of Bankruptcy in the London district, has resigned. We understand that his office will be filled up by Mr. Pollock, now one of the registrars of the Bristol district Court of Bank-

**emptcy.** Mr. Orme has been appointed to the vacant office consequent upon the promotion of Mr. Pollock

Mr. Serjeant *Shee*, who received a patent of precedence in the vacation after Trinity Term, has intimated an intention, we understand, of confining himself in practice chiefly to the Court of Queen's Bench, and only availing himself of his privilege of serjeant in following into the Court of Common Pleas cases arising upon his circuit.

#### RECORDERSHIPS.

We understand that the recordership of Canterbury, vacant by the death of Mr. Boteler, has been filled up by the appointment of *John Deeds*, Esq., of the Home Circuit, brother of one of the members for Kent. Mr. Deeds was called to the bar by the Inner Temple in Michaelmas Term, 1829.

#### LEGAL OBITUARY.

**Sept.**—W. H. Leggett, chief clerk of the supreme court, and coroner of Hong Kong. This gentleman was formerly clerk to the late Mr. Chitty.

**Oct.**—Leonard Raisbeck of Stockton-upon-Tees, formerly a solicitor and recently a magistrate.

**Nov. 22.**—Robert Medcalf of Lincoln's-Inn-Fields, solicitor, partner in the long-established firm of Clarke, Medcalf, and Gray.

**Nov. 24.**—Dr. Henry Iltid Nicholl of Doctors' Commons, eldest son of the late Iltid Nicholl, Esq., Queen's Proctor.

**Nov. 25.**—Charles Shearman of Gray's Inn, solicitor, aged 45.

**Nov. 28.**—Strafford Spurr of Burton Street, Burton Crescent, solicitor, aged 58, formerly of the firm of Kearsley and Spurr.

#### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### *Rolls Court.*

**TAXATION.—PAYMENT.**—6 & 7 VICT. C. 73, s. 38.

*A person who applies for the taxation of a bill under this section after payment, must be able to show that there were circumstances connected with the payment, which would justify the person who paid it in applying to have it taxed. It is not sufficient to show that the bill is in its nature objectionable.*

THIS was a petition to have a bill taxed after payment. The bill related to the costs

of getting in certain outstanding terms upon a purchase; and the objection taken was, that the solicitor was himself the trustee of the terms, and was therefore not entitled to make any charge. The application was made, not by the person who had paid the bill in the first instance, but by a third party, upon whom the cost of the payment would ultimately fall. But it did not appear that there had been any pressure at the time of the payment.

Mr. *Kindersley* for the petition.

Mr. *Wright* and Mr. *Evans*, contra.

Lord *Langdale* said, that persons who made application for taxation under the 38th section of the 6 & 7 Vict. c. 73, continually forgot that they must put themselves in the situation of the person who had paid the bill, and that whatever was fair as between him and his client, they must be bound by.

The petition was dismissed.

*Re Evans*, Dec. 9 & 15, 1845.

#### SUBPENA.—SUBSTITUTED SERVICE.

*Where a defendant keeps out of the way for the purpose of avoiding service of a subpoena, an order should be obtained for substituted service, previously to the subpoena being left at the defendant's usual place of residence.*

THIS was a foreclosure suit, and all attempts to serve the defendant with the subpoena to appear and answer having proved ineffectual, although a copy of the subpoena, with the indorsement, had been left at the place where the defendant usually lodged; a motion was now made that the plaintiff might be at liberty to issue an attachment against the defendant for contempt, or that service of the subpoena at the last known residence of the defendant might be deemed good service. In support of the motion an affidavit was filed, by which it appeared that the defendant occupied two furnished rooms in a house belonging to a Mr. Lankford, at Beckley Heath, where a copy of the subpoena had been left, and that she had been recently seen several times in the neighbourhood, although the parties at the house denied her being there.

Mr. *Simons*, in support of the motion, said, that the affidavit clearly showed that the defendant was evading service of the subpoena.

The Master of the Rolls refused to make an order that the service already made should be deemed good, but said that the subpoena might be served at Lankford's house, a copy of the present order for substituted service being served, before service of the subpoena.

*Thorpe v. Harvey*, Dec. 4th, 1845.

#### Vice-Chancellor of England.

**DISMISSAL OF BILL.**—SUBPENA TO REJOIN.—CONSTRUCTION OF ORDERS 93 & 111 OF MAY 1845.

*Where replication has been filed before the orders of May 1845 came into operation, the plaintiff cannot serve a subpoena to re-*

*join and proceed according to the old practice; but the court will order the plaintiff to file a new replication, and if that is not done the bill will be dismissed.*

THE bill in this case was filed in 1843, and in April 1844 notice of motion was given to dismiss for want of prosecution; whereupon replication was filed, but no step had been since taken. On the 10th of Nov. 1845, the defendant again gave notice of motion to dismiss, whereupon the plaintiff served a subpoena to rejoin.

Mr. Schomberg submitted that the subpoena to rejoin was irregularly served, the 93rd Order of May 1845 having directed that subpoenas to rejoin should be no longer issued; and three terms having elapsed since the filing of the replication, according to the old practice, the bill ought to be dismissed; but if the plaintiff undertook to speed, then the replication ought to be considered as filed on the 28th of October, 1845, and as the 111th Order of May 1845 directed that publication should pass within two months after filing replication, publication ought to be directed to pass, in this case, within two months from the 28th of October.

Mr. Craig, contra, urged, that as the proceedings were before the Orders of May 1845 came into operation, they must be good by the old practice, and therefore the service of the subpoena to rejoin was correct, and was an answer to the present motion.

The Vice-Chancellor said, that the 93rd Order of May 1845 expressly said that no subpoena to rejoin should hereafter be issued; and the service, therefore, of the subpoena to rejoin in this case was wrong: and his Honour ordered that the plaintiff should file a new replication the next day, or that the bill should be dismissed.

*Lovell v. Blew*, Nov. 27th, 1845.\*

BILL, SERVICE OF. — CONSTRUCTION OF ORDER 16, ART. 2, OF MAY 1845.

*Where a bill was filed before the Orders of May 1845 came into operation, service of copy will be deemed good, although more than twelve weeks may have elapsed between the time of the bill being filed and the service.*

The bill in this case was filed on the 11th of June, 1845, and a copy of it was served on the 16th of October last, being twelve days before the Orders of May 1845 came into operation.

\* In the case of *Spencer v. Allen*, before V. C. Wigram, on the 4th Dec., where a motion was made under similar circumstances; but the defendant did not appear on the motion, his Honour said that a fresh notice of motion must be given for the plaintiff to file a replication within a certain time, or that the bill would be dismissed.

By the 16th of those orders, art. 2, it is ordered, that service must be made within twelve weeks from the filing of the bill, unless the court shall give leave for service to be made after the expiration of such twelve weeks.

Mr. Shapter now moved for an order for leave to enter a memorandum of service, under the 24th Order of August 1841, contending, that although under the Order of 1845 the service must be effected within twelve weeks after the filing of the bill, yet, as the time was not limited previously to that order, the service in this case was good.

The Vice-Chancellor said, that anything which was good prior to the last orders coming into operation, remained good afterwards: and made the order.

*Feltham v. Clark*, Nov. 15th, 1845.

APPEARANCE.—ORDER 29 OF MAY 1845.

*Where more than three weeks have elapsed since the service of a subpoena, the court will not make an order for the plaintiff to enter an appearance for the defendant, although the service was effected before the Orders of May 1845 came into operation.*

Mr. Simons, in this case, applied for leave to enter an appearance for the defendant, who had not appeared. The bill was filed in July last, and the subpoena was served shortly afterwards.

The Vice-Chancellor said, that the subpoena must be re-served before the court could make the order.

*Isman v. Holden*, Nov. 15th, 1845.

COMMISSION. — CONSTRUCTION OF ORDER 94 OF MAY 1845.—COSTS.

*When the cause was at issue, and subpoena to rejoin had been served before the Order of May 1845 came into operation, the court will order a commission under the 94th of those Orders, and to be directed to two commissioners.*

In this case a motion was made on the part of the petitioner, for leave to issue a commission to examine witnesses, no objection being made on the part of the defendant, who, however, claimed his costs of the motion.

Replication was filed, and subpoena to rejoin served on the 21st of June last, but no commission was taken out to examine witnesses, nor had any step been since taken in the cause.

Mr. Newton for the motion, stated, that the notice of motion was, that the commission should be directed to four commissioners according to the old practice.

The Vice-Chancellor made the order for the commission, but said that it must be directed according to the new orders to two commissioners. The costs should be costs in the cause.

*Boag v. Robinson*. Dec. 10, 1845.

**MARRIED WOMEN. — PAYMENT TO HUSBAND'S SOLICITOR.**

*The court will not order the payment of money belonging to a married woman, which the husband may be entitled to receive, to the solicitor of the husband.*

A petition in this case was presented for payment of a sum of 241l., standing in the name of the Accountant-General, and belonging to the petitioner, who was a married woman, to the solicitor of her husband, upon the usual evidence.

Mr. Leach for the petitioner, stated, that the husband was abroad, and it would be a convenience therefore to have the order in the form prayed.

The Vice-Chancellor said, it was not usual to order money to be paid to a party's solicitor, and the order could not therefore be made in that form. It must be ordered to be paid to the party himself, and he might then execute a power of attorney.

*Chambers v. Whiteside.* Dec. 12, 1845.

**Vice-Chancellor Knight Bruce.**

**PRACTICE.—AFFIDAVIT.—SIGNATURE.**

*An affidavit of service purporting to have been sworn before a justice of the peace in America, whose signature was duly certified by the governor of the state, but was not signed by the deponent, was refused to be filed by the clerk of the affidavits. The court, upon motion, refused to order him to do so.*

*Query, Whether the defect could be supplied by the production of another affidavit verifying the imperfect document as an exhibit?*

Mr. Bevir moved that the clerk of the affidavits be ordered to file an affidavit of service of subpoena, upon parties resident in the State of Virginia. The service was alleged to have been duly made under the statute of 4 & 5 W. 4, c. 82. The affidavit of service was sworn before a justice of the peace, whose signature was duly certified by the governor of the state, but it was not signed by the deponent, and the clerk refused to file it.

His Honour, (after conferring with Mr. Colville, the registrar,) declined making any order. He suggested, that it might be considered whether the defect was capable of being supplied by the production of another affidavit, verifying the one unsigned, as having been sworn by the defendant, in the nature of an exhibit.

*Anderson v. Stather.* M. T., 1845.

**Queen's Bench.**

(Before the Four Judges.)

**ATTORNEY'S BILL.—PARTICULARS.—TAXATION.**

*An order for taxation of an attorney's bill*

*and a taxation thereon, do not operate as a waiver of an order for particulars; and if further proceedings are taken without the delivery of particulars under such order, they will be set aside.*

Mr. Pearson showed cause against a rule to set aside a declaration with costs to be taxed by the master. On the 24th of February, the plaintiff, who is a solicitor, delivered a bill to the defendant for the amount of 316l. 14s. 9d. That bill not being paid, he, on the 29th March, issued a writ, but on that writ he claimed another sum besides that contained in the bill of costs. The whole sum for which the action was brought amounted to 382l. 1s. 10d. Before the declaration was delivered, the defendant took out an order for particulars of the plaintiff's demand. On the 4th of May, an order was obtained to tax the bill, and the master entered on the accounts between the parties: the bill was reduced from 316l. to 201l.; and upon all the accounts he finally allocated the sum of 7l. 14s. 5d. as the balance. This was on the 6th of November; and the plaintiff then told the defendant that if that amount was not paid on that day, he should go on with the action. On the 7th of November he delivered a declaration, but he did not deliver particulars with it. There is no necessity that he should do so. There can be no necessity for particulars when the demand has been the subject of taxation. The second order was a waiver of the first.

Lord Denman, C. J. — You have disobeyed the order of the court in not giving particulars, and in proceeding when the court said you should not do so. An order for particulars operates as a stay of proceedings. We cannot enter into an inquiry what are the means of knowledge possessed by any party which will be sufficient to render particulars unnecessary.

Mr. Justice Williams. — They want to know what you go for. You are not concluded by what occurred before the master.

Rule absolute.

*Webb v. Hensel,* Michaelmas Term, 1845.

**PRACTICE. — SCIRE FACIAS AGAINST HEIR AND TERRE-TENANT.**

*By rule 79 H. T. 2 W. 4, a scire facias to revive a judgment more than fifteen years old, shall not be allowed without a rule to show cause: but when judgment has been revived by scire facias against the personal representative and a return of nihil has been made, a scire facias against his heir and terra-tenant may be allowed without a rule to show cause.*

*Semble, a scire facias will not lie against the heir and terre-tenant, till a nihil has been returned to a scire facias against his personal representatives.*

The plaintiff became the purchaser of an annuity granted by one Maddocks. The annuity being in arrears, judgment was signed for

the arrears in 1810. Proceedings were afterwards taken in the Court of Chancery against the estate of Maddocks, and the matter was referred to the master to ascertain the amount of arrears that was due to the plaintiff on the annuity. In 1828 Maddocks died, and limited administration was granted to a person by the name of Edwards. A rule was made absolute for a writ of *scire facias* to revive the judgment against the administrator Edwards, to which there was a return of *nihil*. A rule absolute in the first instance was then obtained against the heir and *terre-tenant*. A rule *nisi* had been obtained by the defendant, for the plaintiff to show cause why the writ of *scire facias* and subsequent proceedings should not be set aside, on the ground that the defendant ought to have had an opportunity of showing cause against the issuing of the *scire facias*, to revive the judgment against the heir and *terre-tenant*.

Mr. Jervis and Mr. Welsby now showed cause.

The practice of the court is to require a rule *nisi* for a *scire facias* to revive a judgment against an executor or administrator, but upon a return of *nihil* by the executor or administrator, a rule *nisi* is not requisite against the heir and *terre-tenant*. The rule 79 H. T. 2 W. 4,\* requiring a rule to show cause in the case of a *scire facias* to revive a judgment more than fifteen years old, does not apply under circumstances like the present, where the judgment has already been revived against the administrator.

Sir F. Kelly, Solicitor-General, and W. V. Williams, contra.

This case turns upon the construction to be put on the 79th rule of 2 W. 4. "A *scire facias* to revive a judgment more than ten years old, shall not be allowed without a motion for that purpose in term, or a judge's order in vacation, nor, if more than fifteen years without a rule to show cause." The object of the rule was, that nobody should be called upon to answer a *scire facias* without notice. The rule requiring notice applies to lands in the hands of the heir and *terre-tenant* as well as to goods in the hands of the executor or administrator. [Mr. Justice Wightman. It is said in all the books of practice, that there must be a *scire facias* against the personal representative, before you can proceed against the heir and *terre-tenant*.] This is a *scire facias* to revive a judgment more than fifteen years old, and comes within the terms of the rule of court. *Panter v. Seaman*.<sup>b</sup>

Lord Denman, C. J. It is consistent with all the authorities on this subject, that this rule should be discharged. The judgment has been revived against the administrator by *scire facias*, and the writ then goes against the heir and *terre-tenant*, and it is then open to him to plead any defence he may have to the claim.

Williams and Wightman, J.s., concurred.

Rule discharged.

Wright v. Maddocks. Q. B., Michaelmas Term, 1845.

## Queen's Bench Practice Court.

### ASSUMPSIT.—CONSIDERATION.

*A promise by the defendant to pay the plaintiff an annuity, in consideration of an agreement between them to abandon mutual and unsettled claims and accounts, is binding: so held upon motion in arrest of judgment, in an action of assumpsit, where the general issue had been pleaded, and a verdict thereon found for the plaintiff.*

ASSUMPSIT. The declaration, after stating that there had been and were open and unsettled accounts between the plaintiff and defendant, that disputes existed between them concerning the same, and that each of them claimed certain sums of money so to be due to him from the other, alleged that it had been agreed between them that they should give up their respective claims; and that in consideration thereof, and that the plaintiff would relinquish and forbear to prosecute his claims, the defendant promised to pay to the plaintiff, during his (the plaintiff's) lifetime, an annuity of 6*l*. Breach: nonpayment of the annuity for one year. Plea: non assumpsit.

The cause was tried, and a verdict found for the plaintiff; but the defendant having obtained a rule to show cause why the judgment should not be arrested, upon the ground that no consideration to support the defendant's promise appeared upon the record,—

Peacock now (Nov. 14) showed cause, and contended, that the settlement of cross accounts, and forbearance to sue in respect of disputed claims, constituted ample consideration for the promise alleged, and distinguished the case from those in which a claim upon one side only appeared. *Smith v. Monteith*, 13 M. & W. 427.

E. V. Williams, contra.—The true test is, whether the plaintiff would have been bound at the trial to show the existence of a debt of some amount. Now, the declaration merely alleges that there were mutual claims, for which it might turn out that there was no pretence. Either forbearance to sue for an actual debt, or the existence of an action brought in respect of a doubtful claim, (*Longridge v. Dorville*, 5 B. & Ald. 117,) should have been averred; and as neither of those facts appear, the case is not distinguishable from *Edwards v. Baugh*, 11 M. & W. 641, where it was held, that mere disputes as to whether the defendant was or was not indebted to the plaintiff in a certain sum, and forbearance by the plaintiff to sue the defendant in respect of it, was no consideration for a promise by the defendant to pay 100*l*.

Cur. adv. vult.

Patteson, J., on Nov. 24, said, The case of *Edwards v. Baugh* is very distinguishable from the present. The declaration in that case alleged only a claim upon one side, and a dispute between the plaintiff and defendant re-

\* 3 Barn. & Adol. 385.

<sup>b</sup> 5 Nev. & Man. 679.

specting it. Here, however, the declaration states the existence of *mutual* and unsettled claims and accounts, and that fact is admitted upon the record. I am, therefore, of opinion, that a valuable consideration is shown, and the rule for arresting the judgment must consequently be discharged.

Rule discharged.

*Llewellyn v. Llewellyn*, Michaelmas Term, Nov. 14 & 24, 1845.

### Exchequer.

#### JUDGE'S ORDER.—APPEAL.—ATTORNEY— COSTS OUT OF PURSE.

*An appeal lies to the court from every order of a judge at chambers, unless by act of parliament or consent of the parties the judge has a sole jurisdiction.*

*An attorney undertook to bring an action, and charge costs out of purse only, "should the damages and costs not be recoverable." The plaintiff had a verdict for 600*l.*, and the defendant took the benefit of the Insolvent Act, when a sum was appropriated for the plaintiff as a dividend on the damages and costs. The master having taxed the attorney's costs out of purse only, the court made a rule absolute for the master to review his taxation.*

MR. STRETTON, an attorney of this court, gave the following undertaking, upon being retained by one Chester to bring an action against Chapman:—

"*Yourself v. Chapman*,

"SIR,—Should the damages or costs not be recoverable in this action, under the circumstances, I shall charge you costs out of purse only.

"Yours, &c.,

"C. M. STRETTON."

The case was tried, and a verdict found for Chester, with 600*l.* damages. The costs were taxed at 94*l.* 4*s.* 6*d.*, and judgment was duly entered up and registered for the amount of damages and costs. Chapman afterwards took the benefit of the Insolvent Act, and the dividend on his estate appropriated to Chester was 272*l.* odd. Stretton's bill against Chester was referred for taxation; and on the 29th of May, the master taxed the costs out of pocket only, and recommended the parties to take the opinion of a judge at chambers as to the correctness of the principle. A summons was accordingly taken out on the 5th of June, and an order made by Parke, B., to tax the costs out of pocket only. Another summons was afterwards taken out before the same judge and dismissed.

A rule nisi having been obtained to review the master's taxation,

*Atkinson* showed cause, and contended, first, that as Chester had elected to appeal from the master's decision to a judge at chambers, he could not now come to the court. He cited *Thompson v. Becke*, 4 Q. B. Rep. 759.

*Pollock*, C. B.—There is an appeal to the court from every order of a judge at chambers, unless where the judge has a sole authority by act of parliament or otherwise. In the case cited there was an agreement by the parties to substitute the judge for the court.

*Alderson*, B.—There is always an appeal to the court, unless the judge has a sole jurisdiction.

*Atkinson* then argued, that as Chester had only obtained a portion of the damages and costs, Stretton was entitled to costs out of purse only.

*Pollock*, C. B.—There is no reason why he should not be paid out of what has been recovered. It is evident that he did not intend to guarantee the solvency of the defendant.

*Alderson* and *Rolfe*, B., concurred.

Rule absolute.

*In re Stretton*. Exchequer. Michaelmas Term, 26th Nov. 1845.

### THE EDITOR'S LETTER BOX.

Some of our correspondents will observe, that we have paid due attention to their suggestions, and other topics will be noticed at the first opportunity.

We are gratified by the expressions of approval which some of our recent improvements have called forth. Nothing shall be wanting on our part to effect the professional objects which are suggested.

The letter of "An Old Subscriber," relating to the defects in the law and practice of ejectments, shall be attended to.

Our readers will observe that we have made considerable progress in reporting practice cases, (12 of which appear in this number,) and we shall continue our endeavours to complete the plan.

The names of the reporters, as we observed some time ago, are not repeated in each number, but stated at the commencement of each term or volume. If any change should take place, it will be noticed.

The 1st part of the new Digest is in course of preparation. We shall probably commence with the equity cases early in January.

The "Practical Man" furnishes, in the new and fifth edition, the best set of tables of calculation with which we are acquainted for owners of property of all kinds and their solicitors. The numerous forms are also very useful.

# The Legal Observer.

SATURDAY, DECEMBER 27, 1845.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

## PARLIAMENTARY PRACTICE REGARDING RAILWAY BILLS.

### SUBSCRIBERS' AGREEMENT.—PARLIAMENTARY CONTRACT.

At this period, when so many members of the profession are engaged with railway business, we deem it not immaterial to touch upon some points of practice which may not be sufficiently adverted to in the agitation which attends the present state of these undertakings.

Let us begin, therefore, by offering a few remarks upon the documents which are designated the “Subscribers’ Agreement” and the “Parliamentary Contract.” Both of these are described by Mr. Wordsworth as indispensable to the adequate concoction of every railway company;—but he nowhere tells us the precise objects which they are respectively intended to accomplish, nor the difference which, from his book, may be supposed to exist between the one and the other. At p. 48, Wordsworth on Railways, there is the following statement:—“These deeds are still required. See *post*, p. 51.” Acting on this invitation, we turn accordingly to page 51, where, however, we are merely referred back again to page 48, thus: “These deeds have been already alluded to.” Not a word is said to intimate the nature of the instruments thus mysteriously spoken of; but we are assured that “they must be executed before a certificate of complete registration can be granted.”

Our present endeavour, therefore, will be, to explain all this deficiency.\*

Wherever a company is established, and whatever may be its objects, there is always some memorandum in writing, signed by the parties, to evidence the nature and purposes of the agreement which binds them together. This document does not require to be executed under seal, and in the case of railways is denominated the “Subscribers’ Agreement.” It would, of itself, without any “Parliamentary Contract,” be sufficient to entitle the association to go to parliament with their bill, and to obtain the sanction of the legislature to their project, were it not for the terms of the standing orders, to which we must now direct attention.

And for a right understanding of those orders, it is only necessary to observe that the legislature, in dealing with railway bills, requires to be well satisfied not only that the proposed line is in itself expedient, but that the means are provided or secured to execute or complete it. If the association are unable to perform the necessary works, why should parliament be called upon to examine the merits of the scheme? Why should public business be interrupted, — why should private in-

\* We speak our mind plainly, because Mr. Wordsworth (whose book is in general excellent) can afford to be censured, and because his example may encourage others to write upon new and untried statutes without maturely digesting all the provisions which they contain or the subjects to which they relate.



terests be disturbed, — by an idle inquiry into the expediency of a proposal, until it is first made apparent that its due execution, supposing it to receive a legislative sanction, has been adequately provided for?

The standing orders of both houses declare, that no subscription contract shall be valid, "unless the parties subscribing it bind themselves, their *heirs*, executors, and administrators, for the sums so subscribed."

The "Subscribers' Agreement," therefore, being, as before remarked, an instrument not under seal, and consequently not binding upon the heir, is for parliamentary purposes unavailing. Hence the necessity of a deed under seal; and hence, also, the practice of having two instruments prepared,—a practice which may occasionally be convenient, but which is never, in any one instance, indispensable.

When we say that two instruments may occasionally be convenient, our meaning is this:—The parliamentary contract under seal is required to be printed. It is a public document. It consequently may become the subject of comment in committee. Now if there be any stipulations in the agreement between the shareholders which they might not desire to expose to the unfriendly criticism of their opponents, — in such a case it may be expedient to have a "Subscribers' Agreement," embodying all matters of internal arrangement and regulation with which the legislature in general has nothing to do; and likewise a parliamentary contract under seal for the mere purpose of yielding compliance to the exigency of the standing orders.

But where parties have nothing to conceal, it is assuredly best to content themselves with a single instrument, taking care, of course, to have it executed under seal, so as to come within the words above quoted requiring the *heir* to be bound.

We fancy that by this time enough has been said to show that the constituting of a railway company does not, as Mr. Wordsworth erroneously tells us, require two instruments: it requires only *one*, and in general we are of opinion that it is safer to have one than to have two; for in the present temper of parliament it is by no means clear that an arrangement to secure a plan of secrecy would be viewed with approbation. We very much doubt whether the standing orders contemplate the existence of two separate instruments,—

one to be ostensible, the other to be kept back. And certainly it is only in cases of real and palpable expediency that a course so exceedingly artificial should be followed. Yet it has been our lot to advise parties who actually *insisted* on having two instruments, thinking it dangerous to depart from what they considered to be the universal usage of other railway companies.

Our space does not admit of our enlarging further at present on this and other topics connected with railways. We shall address ourselves again to this subject next week, when we mean to throw out some suggestions for the guidance of those — we believe a numerous class — who feel themselves embarrassed by the confiction of the standing orders made last session as to *deposits*, — the order of the Commons requiring in certain cases only 5 per cent., while that of the Lords requires 10 per cent. in all to be paid up and to appear on the face of the schedules.

## LECTURE ON THE SHORT-FORM CONVEYANCE & LEASES ACTS.

MR. CAYLEY SHADWELL, in his fourth lecture, delivered on the 5th December, taking for his subject the lengthiness of deeds, and the efforts that had been made to shorten them, adverted to the humorous attacks that, in the end of the last and the beginning of the present century, had been made upon the prolixity of conveyances, by the writers of polite literature, of which he gave one or two examples. He then went on to observe, that it was only within the last twenty years that this, amongst other grave questions for the reform of the laws relating to real property had seriously attracted the attention of the legal profession, or been made the subject of distinct professional treatises.

The late James Humphreys, a conveyancer of considerable eminence in his day, was the first who as an author broke ground on the subject of conveyancing reform. It was in 1826 that he published his work entitled "Observations on the actual state of the Law of Real Property, with the outlines of a Code." Undertaking a theme so extensive as a review of our whole conveyancing system, and of the best methods of improving it, and that in a single octavo volume of less than 500 pages, it cannot be supposed that Mr. Humphreys could have much space for considering the unnecessary length of deeds and of the best methods of shortening them. To draw the

attention of the world to the excessive length of our present forms, and of the convenient brevity of his proposed substitutions, he adopts the argument *ad invidiam*. He gives in his Appendix the present forms of conveyance in the three cases of a sale, a mortgage, and a marriage settlement, side by side with his proposed forms in the same three cases; and he makes his deeds of sale under the old form of a lease for a year, an appointment and release, and an assignment of term, occupy twenty pages, while his proposed form of conveyance to a purchaser occupies only half a page. His mortgage, under the old form of a bond and a conveyance, he also makes occupy twenty pages, and his proposed mortgage half a page; while his marriage settlement in the old form he makes also twenty pages, and his proposed form three pages.

Mr. Humphreys' book, however, was occupied with much more important matters than the shortening of deeds. For he was an advocate for alterations of the most extensive character,—his favourite project being, to repeal the whole body of real property law, as it then stood, and reproduce so much of it as was adapted to our present wants, in the form of a code, similar to that great object of his admiration, the Code Napoleon.

In a passage which was often afterwards cast in his teeth by his opponents, after contrasting the law as it then stood with what it would be under his proposed code, he speaks of the system that we have been used to with a vehemence of disrespect that was rather startling; he says, "The fact indeed is, that from the practice of centuries, with the occasional interference of the legislature to remove anomalies, the different parts of the complicated system cohere tolerably among themselves. It is not in any individual defects that the objection lies, the entire nuisance requires to be abated."—Humphreys on Real Property, 1st edit. p. 172. Mr. Humphreys' book caused a great sensation, from the eminence of the author, and the long acquaintance he had had with the working of the system that he was decrying, (for it was at the close of his professional career that he published his opinions,) it was natural that much weight should be given to his judgment. His book called forth many others on the same subject; one in particular, by the late Mr. Park, the author of the work on Dower, under the odd title of "*Contre Projet to the Humphreysian Code.*" Mr. Humphreys published a second edition of his book in the following year, 1827, not abating anything of his hostility to the defects of our conveyancing system, but modifying a good deal what he had urged in favour of a code, which idea he found was not relished by the profession in general. The name of Mr. Humphreys deserves to be had in remembrance by the profession for having forced the consideration of conveyancing reform on the public notice; and he (Mr. Shadwell) thought there could be no doubt that it was to his book, and to the discussion that his book elicited, that we might mainly attribute the issuing of the "Real Property Commission."

Of the services of that Commission Mr. Shadwell said it was scarcely possible to speak in terms of commendation too high.

Their valuable reports, with the appendices annexed to them, contain a vast body of professional information,—information that we find transferred to almost every conveyancing treatise of the day,—information that the lecturer himself had constantly had recourse to in all the lectures he had the honour of delivering,—information which he had taken every opportunity of recommending to the attention of the student. But it was not for their reports alone that we were indebted to the Real Property Commissioners. We owed to them almost all the beneficial statutes of conveyancing reform that had passed the legislature during the last fifteen years. The Fines and Recoveries Act, the new Dower Act, the new Act of Inheritance, the new Statute of Wills; the Fine and Recovery Act in particular, which abolishing the old and substituting new forms of conveyance for the barring of estates tail and the passing the landed property of married women, for one or other of its powers, is called into use in half the transactions that take place,—this act, so constantly tried in practice and never found wanting,—this act, which might be cited as an almost perfect model of what a careful, judicious legislative improvement ought to be,—this act we owe to the Real Property Commission. It had been twelve years in operation, having been passed in 1833, and considering the multitude of transactions that during that time it must have borne upon, and the extremely complicated state of law that it had to deal with, it was quite astonishing that so few questions arising out of it had been heard of in the courts; while the few that had arisen had all, he believed, been decided in furtherance of the operation of the act, and in accordance with the manifest intention of the framers. *Duke of Grafton v. London and Birmingham Railway*, 6 Scott, 719; *in re Wainright, ex parte Slade*, 11 Sim. 552, S. C. Phill. 258; *re Wood*, 3 Mylne & C. 266; *re Blewitt*, 3 M. & C. 250. The Real Property Commission was suddenly put an end to during the late administration, he believed, upon a notion of economy; but never perhaps was money less judiciously saved. Had it been permitted to run its natural course, it would probably have given us safe and well considered enactments on several heads of law which in its reports it had marked out as requiring investigation and improvement. It might, perhaps, have given a new law upon covenants relating to land, particularly the covenant for the production of title deeds, the present law relating to which was not always well adapted to the exigencies of business; and the law relating to judgments might, perhaps, have undergone revision with advantage.

But whatever the Commission might have done, it would, said the lecturer, assuredly not have done nor have sanctioned the doing of that which during the

last two sessions had been done with respect to real property law.

It would not have passed in its present state, "The act for rendering Unnecessary the Assignment of Satisfied Terms," for if it had sanctioned, as is very likely, the idea and principle of the measure, it would have prevented those crudities and anomalies which they had been considering during the last three lectures, and which made the practitioner look with so much anxiety to the period when that new act would begin to operate;—it would have prevented the passing of the act to Simplify the Transfer of Property, which was passed in 1844, only that it might be repealed in 1845; and lastly, it would, as he thought, have prevented also the passing of the two acts "to facilitate the Conveyance of Real Property," and "to facilitate the Granting of certain Leases," and of which, as it appeared to him, the description and the condemnation were alike, in that they would do neither good nor harm.

Mr. Shadwell then proceeded to the consideration of the acts 8 & 9 Vict. cc. 119 and 124.

These acts, he said, might have the merit of meaning well. The object of both of them was the same, that of shortening deeds;—a laudable object, and one which the practitioner ought to have, and now a days most usually had constantly in his view; but one which, when considering the causes of the length of deeds, it might well be doubted whether the legislature had the power of directly furthering. He said *directly*, for indirectly, no doubt the legislature not only had, but exercised the power of shortening deeds most materially. When it abolished fines and recoveries, for example, it not only put an end to a most expensive and tiresome process, but by so doing it relieved deeds from the necessity of referring to the machinery of them, and thereby did, no doubt indirectly, very much tend to the shortening of deeds. So again, in the Assignment of Terms Act, (if it succeeded,) it would, among other things, put an end to a whole class of deeds which sometimes were very lengthy ones. And there was another measure also in the power of parliament which had been often talked about, but which had not yet been accomplished:—the establishment of a general register, which by almost entirely doing away with the necessity of recitals, would tend, perhaps, more than anything else to the shortening of deeds. But as to the direct shortening of deeds by positive enactment, he confessed, from all the attention he had been able to give the subject, that the less the legislature attempted it the better. For what were the principal causes of the length of deeds as things then stood? First, there was the necessity for recitals; and what was the principle of recitals? It was this, that in the absence of a register which would keep together everything that was requisite to be known of the previous history of an estate,—in the absence of a register, it was thought to be proper

that every deed of importance should contain an account of that previous history in itself.

Suppose a conveyance to a purchaser with ten or twelve conveying parties, who are all these, and why are they parties? would be the natural and reasonable question of a subsequent purchaser; questions, which at any distance it might be very difficult to answer if the deed did not contain the account in itself. These were trustees, those mortgagees, this a tenant for life, that a tenant in tail, and so on. This was the principle of recitals, one great cause of the length of deeds, and yet how were they in the absence of a register to be dispensed with? Another great cause of length in deeds was the minuteness of the description of the parcels. But how was this to be helped? A great estate then in the hands of a wealthy proprietor might have been purchased, perhaps in little bits from 40 or 50 different persons, and each bit had a different description. Would it be safe for the sake of brevity to amalgamate all these different descriptions into a few sweeping general words—*all the estates of my lord so and so, in the county of Hereford*—running the risk of confusing boundaries, confounding the title of one part with the title of another part, and so on? No lawyer would be found so to advise them.

Again, in the provisions of a family settlement that was to regulate the expenditure of a family for perhaps two generations. The fortunes for the girls and younger sons, the jointure for the widow, the allowance to the heir—the limitation of the money to be raised to pay the father's debts. How could these things be provided for shortly when they were long to state, even in the most popular and unbusiness-like way that could be chosen? So of the deeds which are required in commercial affairs—a partnership deed, a company deed, a railway deed, documents that are to regulate the expenditure of hundreds of thousands of pounds, and that for a long period, and to provide for all probable and improbable contingencies,—how can they be short? But some parts of deeds remain which, it is admitted, might be shortened or cut out without inconvenience in descriptions of the property, what are called the general words, the reversion clauses, the "all the estate" clauses, the *habendum*, the introductions to covenants, and so on. In deeds of any magnitude these parts, however, bear a small proportion to the whole. In many, perhaps in most cases, they might be left out or shortened with impunity, perhaps with advantage, and the only question that remained, was it better to effect these changes by the hand of the legislature or to leave them to be introduced gradually by the taste and skill of the practitioner? Professions do not move very quickly, but considering the comparatively short time since these questions had been much mooted among lawyers, there was no reason to be dissatisfied with the progress towards abbreviation that had been made by the practitioners themselves.

The reasons that formerly deterred an individual practitioner from attempting any innova-

tion in the established forms were well stated by the late Mr. Tyrrell, in his valuable suggestions on the Laws of Real Property, page 137: "The length of deeds might be considerably abridged by omitting the unnecessary parts of them; but it is important that they should be framed according to well-established forms. At present every word which is usually contained in a deed has received a settled construction, and the different parts are usually arranged in a similar order, so that any one accustomed to the forms of conveyancing can in an instant refer to the words upon which any question may arise, and discover without hesitation the whole extent and operation of the instrument. The dispatch and certainty which are obtained by this adherence to form are too valuable to be sacrificed; and it is this consideration which prevents a counsel feeling himself justified in omitting or improving some parts of deeds which are acknowledged to be useless or obsolete; he is aware that the difficulties which would arise from the want of uniformity, the doubts which the unusual appearance of his deeds would create and the confusion which would be occasioned if every one were to prepare deeds in a different form, are of much more importance than the trouble and expense which are caused by a few unnecessary expressions."

But since this question had been fairly before the profession, see what progress had been made; compare the modern precedents, Bythewood, or Martin, or Davidson, or Neale, with the old lumbering forms of Horsman, or Powell, or Barton, and see what a difference! When some noble reformer produced in the House of Lords his bill of conveyancing reform, and boasted that a deed made under it would lie in the palm of his hand; the present Lord Chancellor, who so often has put himself in the gracious position of explaining the feelings and defending the character of the profession, of which he is the head, was ready to prove and did prove to his noble opponent, that under the existing forms, whenever it was desirable, it was perfectly possible to make a conveyance which, like the proposed one, would also lie in the palm of the hand.

Of the two authors that have treated of these acts, Mr. Davidson and Mr. Neale, Mr. Davidson passes them with one brief note, that savours considerably of contempt. "Davidson's Concise Precedents in Conveyancing," p. 3. Mr. Neale treats of them much more favourably, and gives their history and bearing in considerable detail, and his account is well worth perusing, but even he, their advocate, sums up with a sentence which bears out the proposition, that they will do neither good nor harm. After observing that the new acts require a deed taking effect under them to refer to them, Mr. Neale says:—

"If by so gross an error as the neglecting to refer to the acts at all, all the forms employed should fail so to take effect, still it must be remembered that the substance of each covenant will be contained in the words actually used, and that it will remain with the courts to say

what construction is to be put upon these short covenants. That this construction will usually be one not very far different from that which is expressed in all its minute details by the common form now in use, those familiar with the doctrines of our courts will, we apprehend, be disposed to believe." Neale's Real Property Acts, p. 85.

[The important act for the amendment of the Law of Real Property is the subject of Mr. Shadwell's next lecture, and we hope to report it in the next or an early number.]

## GRIEVANCES IN EJECTMENT PRACTICE.

*To the Editor of the Legal Observer.*

Sir,—Will you or any of your readers be kind enough to give me the benefit of your advice and experience on the following case:—E. F. was served with a declaration in ejectment at the suit of John Doe, on the several demises of A. B. and C. D. E. F., the defendant, is a very poor man, and it was with the greatest difficulty, by begging and borrowing, that he could get together sufficient money to pay for putting in an appearance to the declaration, and but just time enough to save judgment being signed against him, and in fact being turned out upon the road.

A. B. and C. D., the lessors of the defendant, had no right or title to the property sought to be recovered in the action of ejectment, and consequently they did not proceed with it. The defendant obtained and had the lessors of the defendant served with a rule to reply, in order to make them pay the costs of appearance, &c. It seems, however, that there is great doubt of recovering the costs of the lessors of the plaintiff, because they have never entered into the common consent rule, and that consequently John Doe is the only party on the record.

Now, if this is the state of law as to ejectments, it surely ought to be amended, as by this means any person may harass or annoy another by having him served with a declaration in ejectment, and after putting the party served to all the alarm and expense which such a document naturally produces, and obliging him to appear, &c., can then escape with impunity.

AN OLD SUBSCRIBER.

## THE LAW RELATING TO RAILWAYS.

### NOTICE OF ACTION UNDER RAILWAY ACTS.

THE legislature has thought it expedient, in nearly every instance in which railway companies have been incorporated by act of parliament, to introduce a clause entitling the company, amongst other privileges, to notice of action. The intention and effect of those clauses is, to place persons conducting the affairs of railway companies on the same footing as various other classes of persons are placed, who are acting in pursuance of public acts of parliament, or in the *bond fide* discharge of public duties, and are therefore considered entitled to similar protection. Incorporated bodies seldom fail to assert and strictly enforce all legal rights; but as the courts in two recent cases have put a limited construction upon the sections conferring this privilege upon railway companies, it is not unimportant to consider, under what circumstances those bodies are entitled to the benefit of this protective clause.

The provisions regulating the extent of notice, or in other words, the period which must elapse after the notice and before the action is commenced, were curiously, it might perhaps be said absurdly, various, until Sir Frederick Pollock, when Attorney-General, endeavoured to provide a remedy, by a clause introduced for that purpose in the statute 5 & 6 Vict. c. 97. The 4th section of the act, after reciting that it is expedient that the law should be uniform with respect to notice of action, provides, "that from and after the passing of this act, in all cases where notice of action is required, such notice shall be given one calendar month at least before any action shall be commenced; and such notice of action shall be sufficient, any act or acts to the contrary thereof notwithstanding." Short a period as has elapsed since the passing of this act, subsequent legislative provisions have been made extending or diminishing the prescribed period of a month, according to the caprice of the framers of those acts, in respect of which we apprehend the desired uniformity no longer exists, and that the section above cited is, *pro tanto*, wholly inoperative.

The language of the several clauses enacting when notice of action shall be

given, is also subject to some variation, irrespective of the period of notice. The form usually adopted, however, happens to be that which became the subject of judicial consideration in two cases to which reference is about to be made, and is as follows: "That no action, suit, or information, nor any other proceeding of what nature soever, shall be brought, commenced, or prosecuted against any person or corporation, for anything done or omitted to be done in pursuance of this act or in the execution of the powers or authorities, or any of the orders made, given, or directed, in, by, or under this act; unless <sup>(2)</sup> days previous notice in writing shall be given by the party intending to commence and prosecute such action, suit, information, or other proceeding, to the intended defendant," &c.

The question, whether notice of action was necessary under this clause, arose in *Palmer v. The Grand Junction Railway Company*,<sup>b</sup> under the following circumstances:—

The plaintiff, a horse-dealer at Northampton, booked nine horses at the company's booking office in Liverpool, to be conveyed from Liverpool to Birmingham, and paid for their carriage. The horses were placed in boxes constructed for the purpose, and adapted to the railway, and proceeded on the journey, but as the train approached Birmingham, the engine was thrown off the rails, in consequence of suddenly coming in contact with a horse which had strayed from an adjoining field. The horse-boxes were overturned and thrown down an embankment, and one of the plaintiff's horses was killed, and all more or less injured. The plaintiff thereupon brought his action on the case against the company, alleging in his declaration, as a breach of duty, that the defendant did not use due or proper care in and about the carriage and conveyance of the horses from Liverpool to Birmingham. A verdict having been taken for the plaintiff, a rule *nisi* for a nonsuit was afterwards obtained upon two grounds:—1st, That the defendants were charged with negligence as carriers, but that the evidence showed they had been guilty of no other negligence but the non-repair of fences, which related to their character as railway proprietors and not as carriers; 2ndly, That under 3 W. 4, c. 34, s. 214, the defendants were entitled to 14 days' notice of action, which had not been given. The first point was disposed of by the court on the

<sup>a</sup> In the Grand Junction Railway Act, (3 W. 4, c. 34, s. 214,) the blank is filled with the word "fourteen," and in the London & Brighton Act, (7 W. 4, and 1 Vict. c. 119, s. 253,) with the word "twenty."

<sup>b</sup> 4 Mees. & W. 749.

ground, that the defendants were not at liberty to take such an objection after verdict, having omitted to do so at the close of the plaintiff's case. Upon the question of notice, *Parke, B.*, in stating the unanimous judgment of the court, observed, that if the action was brought against the railway company for the omission of some duty imposed upon them by the act, notice would be required, but when the matter was looked into, it appeared, that the defendants were sued as common carriers, who had received nine horses for the purpose of being taken to their journey's end, and there delivered, which horses the defendants did not deliver in consequence of an accident. A breach of duty by the company as common carriers was not a thing omitted to be done in pursuance of the act, or in the execution of the powers or authorities given by it. The act did not compel the company to become carriers, it only enabled them to be so if they thought fit, and when they elected to become so they were liable in the same way as other common carriers. Had the action proceeded on the ground, that the company neglected to repair the fences, which was a duty cast upon them by the act, the plaintiff could not have succeeded without giving notice of the action, but here they were liable as common carriers for not having safely delivered the horses, the accident not having arisen from the act of God or the Queen's enemies, which were the exceptions in favour of carriers. Upon these grounds the rule for entering a nonsuit was discharged.

The construction of a similar clause was again judicially considered by the Court of Queen's Bench, in the more recent case of *Carpue v. The London and Brighton Railway Company*.<sup>c</sup>

The declaration in that case alleged, that the company were owners of the railway and of carriages used by them for the conveyance of passengers along it for reward, that the plaintiff at their request became a passenger in one of the carriages, and it thereupon became the duty of the company to use due care and skill in conveying him, but that they so unskilfully and carelessly managed the carriage in which he was a passenger, the train to which it was attached, and the engine whereby it was drawn, that the carriage was thrown off the rails and the plaintiff severely injured. At the trial it was insisted on the part of the defendants, that they were entitled to twenty days' notice in writing before action, under sec. 253 of stat. 7 W. 4, and 1 Vict. c. 119, and leave was given to move to enter a nonsuit, if the court should be of that opinion. The plaintiff had a verdict.

Upon the argument in support of the rule, it was strongly argued, that the company being specially authorised by the act to carry, even in the capacity of carriers were entitled to notice of action, where the action is brought for negligence in carrying. The answer to this branch

of the argument was put by *Patteson, J.*, in the interrogative form.—“If,” he asked, “the company carry so carelessly as to mutilate their passengers, is that anything done or omitted to be done in pursuance of the act?” It was then contended, that the evidence at the trial pointed to negligence in not repairing the rails, and that as the declaration was so framed as to make such evidence admissible, it raised the necessity of notice, and in support of this view the dictum of *Parke, B.*, in *Palmer v. The Grand Junction Railway Company*, that if the action were founded on a neglect in not duly fencing the railway, on account of which the travelling was dangerous, the case would have fallen within the meaning of the section requiring notice, was pressed upon the attention of the court. But the court, after taking time to deliberate, came to the conclusion, that they were not called upon to consider, how far the law laid down in the dictum of *Parke, B.*, was correct, as it was clear, that the injury in this case had arisen from the defendant's misconduct as carriers, and not as railway proprietors, though in considering the evidence it was impossible to exclude some reference to the actual state of the railway. The argument in favour of the necessity of notice, therefore, was unfounded, and the plaintiff entitled to retain his verdict.

On the trial of *Carpue v. The London and Brighton Railway Company*, a principle of great importance was enunciated and acted upon by *Denman, C. J.*, whilst presiding at Nisi Prius. According to the evidence of the plaintiff's witnesses, the rails were not in perfect order at the spot where the accident occurred; and one of the witnesses stated that, in his opinion, the train was proceeding at a speed which, considering the state of the rails at this spot, must be hazardous.

In summing up, his lordship told the jury, that the exclusive management both of the machinery and the railway being in the defendant's hands, it must be presumed, that the accident arose from their want of care, unless they gave some explanation of the cause by which it was produced—an explanation which the plaintiff, not having the same means of knowledge, could not reasonably be expected to give. Upon the application for a rule nisi, it was suggested, that this observation of the learned judge constituted a misdirection, as it was in effect telling the jury, that it lay on the defendants to disprove and not on the plaintiff to prove negligence. The rule was granted to show cause why there should not be a new trial on this point, or a nonsuit entered in respect of the omission of notice. (On showing cause against the rule, however, the defendant's counsel stated, that they only wished for the opinion of the court on the point of notice.

The doctrine laid down at Nisi Prius did not, therefore, become the subject of discussion, and cannot be said to have ob-

tained the deliberate sanction of the full court; but it is fortified by the circumstance, that the defendants' counsel (of whom the late Sir William Follett was one) declined to avail themselves of the opportunity afforded them of questioning its soundness.

As regards the question of notice, the two decisions above referred to are conclusive, that where an action is brought against a company in the capacity of carriers, and not as railway proprietors, whether the injury complained of is done to chattels or passengers, no notice of action is necessary, under a clause framed in the same manner as that above set forth.

## NOTICES OF NEW BOOKS.

*The Orders of the High Court of Chancery, from Hilary Term 1800, to Michaelmas Term 1845, with the Statutes relating to Pleading and Practice in that Court; including the Acts for taking Bills pro Confesso, and Effectuating the Service of Process on Persons out of the Jurisdiction; for Amending the Laws respecting Conveyances by Infant Trustees, Lunatics, &c.; and for abolishing the Equity Jurisdiction of the Court of Exchequer: with Notes on the Decisions upon the above Orders and Statutes; and Explanatory Observations.* By SAMUEL MILLER, Esq., Barrister-at-Law. Second Edition. London: Stevens & Norton, 1845. Pp. 690.

WE noticed the 1st edition of this work, which appeared in the year 1841. The subsequent Orders, particularly those of May last, have induced the author to prepare a new edition. The former collection commenced with the Orders of 1828. The present is carried back to 1800. During the intervening period, however, but few material alterations were made. They are as follow:—

16th Feb. 1800, relating to payments out of court to married women.

26th Feb. 1807, regulating, and in several items increasing the fees of solicitors and sworn and waiting clerks.

22nd April 1811, regulating the examiners' fees.

24th March 1814. Particulars of sale.

18th Jan. 1815. Solicitors' attendance at the hearing of causes.

10th March 1818. References of answers for insufficiency, &c.

5th Aug. 1818. Costs of abandoning motions.

6th Dec. 1824. References to the masters.

4th Nov. 1827. Lunacy.

We give this list in order to show how rarely any changes formerly took place in the practice and course of proceedings in suits in chancery. The duties of practitioners in both branches of the professions are now rendered much more difficult of performance than they were in former times. This is owing in many cases, not so much to the uncertainty of the orders themselves (though sometimes unavoidably defective from the imperfection of language and the impossibility of providing for every possible contingency) as to the perverted ingenuity of parties who seek to escape from the effect of the true intention of the orders.

Mr. Miller has continued the plan which he adopted in his first edition, and which he thus explains:—

"The principal object of the editor in the compilation of this work has been to concentrate, under distinct heads, all the new Orders of the Court of Chancery, so as to present them to the student and practitioner in a condensed and classified form, together with the various decisions that have taken place upon such of them as have come under the consideration of the court since they were issued.

"To accomplish his purpose, the editor has adopted an alphabetical arrangement of the various proceedings to which the new Orders relate, and under each head has stated the substance and effect of all the orders affecting the particular proceeding referred to in it. Thus, under the head of Bill will be found, first, all the new Orders relating to amendment of bills; then all such as relate to the dismissal of bills; thirdly, those relating to the interrogatories now to be inserted in bills; and lastly, those relating to the marking of bills; and in the notes, the cases that have been decided upon such of those orders as have received a judicial interpretation.

"The editor has been studiously careful to render this part of his work as clear and intelligible, and at the same time as accurate as possible; and he believes that all the orders are correctly analysed; but in order that the reader may, if necessary, test the accuracy of his analysis, should any particular order come into question, he has invariably added the number and description of each order, so that an easy reference may be made to the order itself in the Appendix.

"The editor was at first desirous of arranging the orders chronologically as well as alphabetically in the analysis, but he soon found this to be impracticable; and as the chronological order is preserved in the Appendix, there will be little

difficulty in referring to them in that form should it be deemed advisable so to do.

"Since the Orders of 1828 have come into operation, several acts of parliament have been passed which have materially altered the practice and proceedings of courts of equity; and the editor, conceiving it would add to the utility of his work, has given an abstract of them, together with the decisions that have taken place upon them in courts of equity; and such of the sections as are likely to be adverted to in general practice being set forth almost *verbatim*, a reference to the acts themselves will, it is hoped, rarely be found necessary.

"In arranging these, the editor conceived it would be more convenient if the acts 11 Geo. 4, and 1 Will. 4, c. 36, and 2 Will. 4, c. 58, relating to taking bills *pro confesso*, immediately followed the analysis of the orders, several of their enactments and the rules contained in them being intimately connected with some of the new orders; and those acts, therefore, together with the acts for effectuating service of process on persons out of the jurisdiction, &c., form the second chapter. Then follow the acts for regulating the proceedings and practice of the Court of Chancery, passed in the late and present reigns, and the recent act for abolishing the equity jurisdiction of the Court of Exchequer; and in the last chapter are the remainder of the acts (the 11 Geo. 4, and 1 W. 4, c. 36, above referred to, being one) usually denominated 'Sugden's Acts.'"

In the preface to the present edition, the learned writer observes, that

"The advantages of the editor's arrangement by bringing together all the orders upon one subject under one head, has, he believes, been generally admitted, and a better proof of its value can scarcely be adduced than is furnished by the fact, that a learned editor of a recent work on the orders has thought fit to adopt it, and without acknowledgment.

"In the present edition are included all the orders from Hilary Term, 1800. The editor originally intended to make a complete collection of all existing orders, but on referring to those of the two last centuries, there appeared to be so many which in such a collection ought to be set forth, and which, even for reference, would have been of little use, that he considered such an arrangement would increase the bulk of his work without adding to its general utility; more particularly as Mr. Sanders has, in his valuable edition of the Orders, supplied the wants of the profession in this respect.

"The editor has deemed it advisable to preserve all the orders discharged by the first Order of May, 1845, as the cases upon several of them may be used as authorities in the construction of existing orders; but he has by means of a side-note enabled the reader at once to see which of the orders have been discharged, and he has confined his analysis to those which are in actual operation. He has also added all the authorities upon the Orders, and upon Sir Edward Sugden's Acts up to the present period.

"The Orders of May, 1845, which are evidently the result of much labour, thought, and judgment, cannot fail to be highly beneficial both to suitors and practitioners. Among other important amendments, the old and complicated machinery that formerly interposed a long delay between the completion of pleadings and the hearing of a cause by means of undertakings to speed, and rules to produce witnesses and to pass publication, has been entirely abolished, and a more simple arrangement substituted, so as to ensure a speedy hearing. Many alterations have also been made for the purpose of expediting proceedings generally; and one essential benefit has invariably been kept in view, viz., that whenever an alteration has been made in a former order, however slight, its place has been supplied by a new one, and thus any conflict of construction has been avoided. The work of amendment will probably not be considered complete until the whole of the Orders have been consolidated, and one perfect code framed, and this will doubtless follow in due season; but to remodel a system, the growth of centuries, must necessarily be the work of time and deep reflection; and when it is considered that more than four hundred general orders have been issued within the last twenty years, while for thirty years previously only twelve were issued, the most importunate reformer must feel satisfied that there has been no lack of inclination to proceed with the work of amendment and reconstruction."

We think the Notes are carefully written; the Analysis and Index will afford a ready reference to the several Orders; and the work must be peculiarly useful to the practitioners of the court.

## THE INCORPORATED LAW SOCIETY.

THE recent improvements in the plan of this society having been completed, the council have printed a short statement of its origin and progress, — its objects and advantages.\* As new members usually join the institution at the beginning of the year, we gladly give publicity to this prospectus, which is as follows;—

"The Incorporated Law Society of the United Kingdom is composed of attorneys, solicitors, and proctors practising in Great Britain and Ireland, and writers to the signet, and writers in the courts of justice in Scotland, and of gentlemen who may have voluntarily retired from those professions.

"This society was instituted in the year 1827, according to the provisions of a deed of settle-

\* Some highly respectable solicitors declined belonging to the society whilst it remained in the form of a joint-stock company. This objection is now removed.



ment, and in 1831 was incorporated by charter; its constitution, under both, resembled that of a joint-stock company, its members holding shares in the property.

"In the progress and development of the several useful purposes contemplated by the committee of management, under the deed of settlement and original charter, they experienced considerable disadvantages consequent on the alleged commercial character of their undertaking.

"To obviate this objection, the committee, with the sanction of repeated meetings of the then proprietary body, were authorised to apply for a new charter, of a general and collegiate nature, and to surrender the existing charter; in the prosecution of which objects, the committee were gratified by a liberal renunciation on the part of a large majority of the proprietors of their individual and transferable shares in the property and effects of the institution.

"A new charter was accordingly granted by her present Majesty, on the 26th day of February, 1845, by the tenor of which, the constitution of the society has been so modified that the individual rights and responsibilities of the members, as proprietors of the former institution, have become merged in the corporation, and the whole capital and possessions, rents and income, are rendered applicable to the general purposes of the society 'in promoting professional improvement, and facilitating the acquisition of legal knowledge.'

"By the 6 & 7 Vict. c. 73, the society is appointed Registrar of Attorneys and Solicitors, and the Commissioners of Stamps are directed not to grant any certificate until the registrar has certified that the person applying is entitled thereto. Under this act, an alphabetical book is kept by the society of all attorneys and solicitors on the rolls of the several courts of law and equity. An annual book is also kept of all applications for the registrar's certificate, with the name of the court in which each attorney was admitted, and the date of admission, which book is open for inspection without fee.

"The judges of the common law courts and the Master of the Roll, under the general rules and orders of court, have hitherto annually appointed twelve members of the council, with the masters of the several courts of law, as examiners of all persons applying to be admitted on the roll of attorneys and solicitors.

"The society has for upwards of fourteen years pursued a course of progressive usefulness, productive of essential and increasing advantage to the profession, resulting from the exertions of a recognised body of practitioners anxious to co-operate in promoting every measure calculated to afford facilities for professional practice, to remedy abuses, and to sustain the just claim of their branch of the profession to the respect of the community at large. In furtherance of these desirable objects, the council and their different committees hold regular meetings for conducting the general business of the society. They cause lists of persons applying to be admitted and re-admitted attorneys and solicitors

to be printed and distributed among the members, and transmitted to the provincial law societies, in order that improper persons may be opposed. Where there is sufficient ground for opposition, the council undertake it on behalf of the society, and they also apply to the courts to have persons struck off the rolls who misconduct themselves as attorneys.

"They cause to be printed and distributed amongst the members all new rules of court, and other important professional information.

"On their opinion being required as to any doubtful or disputed professional usage, they carefully consider the matter, and register their decisions in a book kept for that purpose, which is accessible to the members of the society.

"They examine all bills brought into parliament which relate to the law, and state in the proper quarter such objections as occur to them, and also suggest such additions and alterations as appear to them necessary for improving and perfecting the proposed enactments; and in these and the like instances they take all such measures as seem best calculated to promote the general interests and respectability of the profession.

"The society already comprises a great proportion of the most respectable practitioners in town and country; and the council are desirous of calling the attention of their professional brethren to the advantages afforded by the establishment to the members of the society, as well as the profession generally.

"Any gentleman duly qualified according to the charter may be admitted a member, on being proposed by two members of the society, and approved by the council, and paying an admission fee of 15*l.*, and an annual subscription of 2*l.* if a town member, and 1*l.* if a country member.<sup>b</sup>

"Every member immediately on his admission becomes entitled to the benefits resulting from the institution, which comprises the following departments:—

#### *"The Hall,*

open daily, from 9 o'clock in the morning till ten at night, furnished with suitable accommodations for transacting business, and with the votes and proceedings of both houses of parliament, London Gazette, morning and evening newspapers, reviews, and other useful periodical publications.

"Here also members of the profession are enabled to meet one another by appointment from distant parts of the town or country for all purposes of business, and to employ the intervals of engagements profitably as well as agreeably.

"An Ante-room and Registry Office, for the use of members and their clerks, open daily from 9 o'clock in the morning until 8 at night.

"In the registry office are kept an account

<sup>b</sup> "A proportion of the annual subscription is required according to the time of admission.

of appeals in the House of Lords, the general and daily cause papers, seal papers, lists of petitions in causes in the courts of equity, and in lunacy and bankruptcy, the sittings papers, peremptory papers, special papers, and papers of new trials in the courts of law; with a statement of the business intended to be proceeded in on the following day, as far as practicable; and the earliest information of the arrangements made by the judges for the dispatch of business.

"Boxes with locks are provided in the ante-room for members, in which they may deposit their papers, thus saving the trouble and expense of carrying them to and from the courts and offices. Books are also kept for entering particulars of property to be sold or purchased; of money to be lent, or wanted to be borrowed on mortgage or otherwise; of applications for partners, and for articulated, managing, and other clerks.

#### "A suite of Rooms,

for meetings of arbitrators, or on any other professional matter.

"Experience has proved this part of the institution to be a great convenience to the profession. In these rooms, also, business which cannot be conveniently done in the hall may be transacted, and appointments made with clients and others.

#### "Fire-proof Rooms and Closets,

for the deposit of deeds, &c. in separate boxes, or to let to members of the profession, either for temporary or permanent purposes; each renter having a private key of his own room or closet to which no other person has access: while all the rooms are secured by a principal outer door, of which the secretary alone has the key.

#### "A Library,

which is open daily, from 9 o'clock in the morning until 10 at night, except on Saturdays, when it is closed at 4. It comprises a complete collection of books relating to the law, and to those branches of literature which may be considered as more particularly connected with the profession; such as reports of proceedings in the several courts of law and equity, local and private acts, journals, and other proceedings of parliament; county and local histories; with heraldic publications, and other matters of antiquarian research, &c. About 6,000 volumes have already been collected, including the statutes at large, most of the text-books, a complete set of all the reports both in law and equity, a great body of county history and of topographical and antiquarian works, all the volumes printed by the commissioners on the public records of the kingdom, and the London Gazette from its commencement.

"In case any book in the library should be wanted for production in any of the courts of London or Westminster, the librarian, or a messenger, will attend with it, on the request of any member of the society.

"To enable clerks the better to qualify them-

selves for examination previously to admission the articulated clerks of members are admitted to the library on payment of an annual subscription of 1*l*.

"The advantages of such a library may be appreciated on consideration of the great expense attending the purchase of such books as are absolutely necessary to an attorney or solicitor for constant use; whilst the possession of a comprehensive law library, particularly if it include parliamentary publications, county histories, antiquities, &c. is scarcely within the compass of any individual, not only on account of the expense, but also of the want of room for it.

#### "Lectures

on the different branches of the law are regularly delivered in the hall, and are numerous attended by the articulated clerks of members, and other students, who derive much instruction from them; and members themselves have found them particularly useful, in consequence of the various and extensive alterations which have already taken place, and are still in progress, as well in principle as in practice, both in law and equity.

"The members of the society are entitled to attend these lectures *gratis*; while to clerks the expense is very moderate, being 1*l*. for each set of lectures, or 2*l*. for the whole course for persons under articles of clerkship to members, or for persons who have served such clerkship, while they continue clerks to members, and are not practising on their own account. The articulated clerks of gentlemen *not* members pay 1*l*. 10*s*. for each set, or 3*l*. for the whole; and other students are admitted on paying 2*l*. for each set of lectures, or 4*l*. for the whole course. The lectures are delivered at eight o'clock in the evening, so as to interfere as little as possible with the business of the day; and it is recommended to every clerk or student who can spare the time to avail himself of such an opportunity of promoting and facilitating his studies.

#### "Club-room.

"There is a club, consisting only of members of the society who have paid entrance fees and annual subscriptions; and any other members of the society may become members on being proposed, balloted for, and elected, and on payment of the entrance fee of five guineas, and an annual subscription of five guineas for town members, and three guineas for country members."

"The members of the club, besides other advantages, are supplied with dinners and refreshments, on the plan of the University, Athenæum, United Service, and similar clubs.

"December, 1845."

[We lately stated the names of the council elected at the annual general meeting. See 30 L. O., p. 480.]

"If admitted after June, the subscription for the remainder of the year is three guineas for town, and two guineas for country members."

## LIABILITY OF PROVISIONAL RAILWAY COMMITTEE-MEN.

A VAST mass of litigation will doubtless arise out of the enormous number of projects for railways, and we shall from time to time collect all the information in our power for the assistance of practitioners engaged in such cases. For the present we extract the following from a useful pamphlet just published.\*

"The promoters of a railway company having obtained a certificate of provisional registration may act *provisionally*; i. e. they may assume the name of the intended company, but coupled with the words provisionally registered: may perform all such acts as are necessary for constituting the company, or obtaining an act of parliament: may enter into contracts for any services, or the execution of any works which are necessarily required for the establishing of the company, and into contracts for services in making surveys and performing all other acts necessary for obtaining an act of incorporation (7 & 8 Vic. c. 110, s. 23). Every person acting by whatever name in the forming and establishing a company, at any period prior to the company obtaining a certificate of complete registration, is to be considered as a promoter. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be, must be duly registered. Does not a provisional committee-man then hold himself out to the world as a person whose name and agreement have been thus registered, and therefore as a promoter and member of the company? And is not his having held himself out as a promoter, evidence to go to a jury of his having authorised the making of such contracts as are contemplated by section 23; there is a joint-stock company of which he allows his name to appear as a member; he represents himself as having agreed to take a share in the company, as an agreement to do so ought to be registered on his becoming a provisional committee-man; and there being no letters patent or act of parliament limiting his liabilities, he thereby holds out to the public, that he has given to the other members of the company and its agents authority to pledge his credit in con-

tracts necessary for the formation of the company. Of course, it will be a question for the jury, whether the contract was in fact entered into on his credit, without which he could not be liable; and the circumstance of the party with whom the contract was actually made being a friend or old customer of the plaintiff; the fact of the plaintiff and defendant being personally unknown to each other, living in different parts of the country, and the defendant occupying no very conspicuous station in society, &c. would probably lead a jury to infer that it was not upon his credit that the work had been done or the goods supplied, for which he is called on to pay. Persons occupying prominent positions in society, or well known in those parts of the country where the works are being carried on, should, in case they desire to free themselves from future liabilities, advertise their retirement from the committee in the daily and local newspapers and in the Gazette, and give particular notice thereof, when possible, to those parties engaged in the work, who they may think have possibly entered upon it under the idea that they were the promoters of the scheme; but as this involves in some degree a recognition of a previous liability, it will of course be proper to consider in each case, whether there is any probability that the fact of a man's name having appeared in the list of provisional committee-men has led any person to enter into a contract with the company.

Mr. Fitzpatrick, in a note, adds the following references to cases, which it will be useful to consult.

"It may be well to observe here, that the case of a provisional committee-man, since the 7 & 8 Vict. c. 110, in no way resembles that of the defendants in *Fox v. Clifton*, 6 Bing. 776, and *Pitchforth v. Davis*, 5 M. & W. 2, and that class of cases; they only decided that parties consenting to become members of a company in a certain event which never happened, could not, where they gave no authority to publish their names as engaged in the getting up of the company, be sued in respect of debts contracted by the original promoters. Since the act, parties registered as being committee-men, and having consented to take a share in the proposed company, will be liable to all debts contracted with the company as such, in respect of things necessary for its formation, whether their names have been advertised or not. With respect to the liability of a provisional committee-man, apart from the act, it may be observed, that in the cases of *Wood v. Duke of Argyll*, 7 Scott, N. R. 885; and *Lake v. Duke of Argyll*, 14 L. J. R. 75, the two latest cases upon the point, there was evidence of attendance at meetings held for the purpose of the formation of the company; and that in the latter case the Duke read from the chair a resolution ordering the work for which the action was brought; and this, coupled with the fact of his having consented to his name being advertised as president of the association, was held to be evidence to go to the jury that the plaintiff was justified in

\* Railway Rights and Liabilities arising before an act of incorporation is obtained. By R. W. Fitzpatrick, Esq., Barrister-at-Law. 1845. T. Blenkarn.

presuming that the Duke had authorised the party, by whom the order for the work was given, to make the contract in his behalf. There was in that case some evidence of such authority apart from the publication of his name; as the Duke signed the resolution ordering the work, and being present at the meeting, might be presumed to have taken part at whatever was done there, so that that case does not decide the point, whether, if he had barely allowed his name to be advertised, he could have been held to have led the plaintiff to believe in his having authorised the contract; but even then it would seem difficult to say that the case could be withdrawn from the jury, where the contract was for things absolutely necessary to the formation of the company."

## LAW OF ATTORNEYS.

### PROFESSIONAL RESPONSIBILITY. — IGNORANCE.—NEGLECT.

It was a wise and just remark of Lord Mansfield,\* that "an attorney ought not to be liable in cases of reasonable doubt." He is bound to show reasonable *skill* and reasonable *diligence*. Under the head of *skill*,—if he should, for example, advise his client that his eldest lawful son was not his heir at law, and damage arose, the solicitor showing ignorance so gross would be responsible; because his profession implies a guarantee of reasonable skill in the law, and any one reasonably skilled in the law must know that the eldest legitimate son is the heir. So as regards *diligence*. A solicitor's profession implies an undertaking of reasonable diligence; but this does not mean that he shall be obliged to make good to his client every loss which the client may perhaps be able to show might have been averted by an excessive assiduity or an extraordinary exercise of vigilance and activity. It is useless to put cases by way of illustration, since we have a recent decision of the House of Lords, in a number just published of Messrs. Clark & Finnelly's Reports,<sup>b</sup> showing the opinions of the law peers on the subject. The question arose upon a Scotch appeal; but the principles which govern cases of this sort are precisely the same on both sides of the Tweed. And therefore we cannot do better than give a short summary of the speeches, in the order of their delivery. The action had been brought against a writer to the signet at Edinburgh, for an alleged error or mis-

take committed by him as attorney or solicitor for the plaintiff.

Lord Brougham said, it was of the very essence of such an action that there should be negligence of the description which we call *crassa negligentia*—that it should be *gross*. And as regarded want of skill,—the same noble and learned person intimated, that if an attorney were to display ignorance of the A, B, C of his profession, and damage consequently ensued, he should be bound to repair it; but otherwise an action would not lie.

Lord Campbell entered more fully into the question, observing, "that in an action such as this by the client against the professional adviser, to recover damages arising from the misconduct of the professional adviser, there was no distinction whatever between the law of Scotland and the law of England. The law must be the same in all countries where law has been considered as a science. The professional adviser has never been supposed to guarantee the soundness of his advice. Against the barrister in England and the advocate in Scotland no action can on such grounds be maintained; but against the attorney, the professional adviser, an action may be maintained. But it is only where he is guilty of *gross negligence*; because it would be monstrous to say that he is responsible for even falling into what must be considered a mistake. You can only expect from him that he will be honest and diligent. It would be utterly impossible that you could have a class of men who would give a guarantee binding themselves, in advising upon suits at law, to be always in the right." The Lord Chancellor, concurring in these views, rested his opinion shortly upon this ground,—that "when an action is brought against an attorney, he is liable merely in cases where he has shown a want of reasonable skill, or where he has been guilty of *gross negligence*."

## REAL PROPERTY LEGISLATION.

To the Editor of the Legal Observer.

SIR,—I am aware that anything I can say or do in connexion with the subject I am about to mention, would be of little or no avail; at the same time I cannot but grieve to see you fighting alone, or nearly so, against the bold and thoughtless innovators on our laws—to see you year after year opposing and exposing the visionary and unsound measures of these would-be wise legislators, who think that the sun of knowledge and wisdom has only risen with themselves.

It is truly lamentable to consider the state the laws of this country will shortly get into—they are becoming unsettled, and I think it requires very little foresight to predict, that great uncertainty and confusion must ensue. It cannot be wise legislation to pass acts which people may adopt or not as they may think proper—all laws should be clear and decisive,

\* 4 Burr. 2060.

<sup>b</sup> Vol. 12, p. 91.

and acts of parliament to be looked upon with respect should be strict and binding, leaving little or nothing for private interpretation and construction.

With respect to the modes of dealing with real property, the nearer we approach uniformity the better, but it is impossible, unless you make possession of property or the receipt of the rents and profits an absolute title to such property, to shorten the forms of assurances much, or to improve upon the old forms.

I shall say no more, but thank you for all your endeavours to oppose the innovations already made, and to promote the real interests and advantage of the owners of property and the profession to which I belong.

#### A CONSTANT READER.

### PERPETUAL COMMISSIONERS.

The Lord Chief Justice has been pleased to appoint the following gentlemen as Perpetual Commissioners, under the abolition of Fines and Recoveries Act:—

Anthony Adey, Wotton-under-Edge, Gloucester.

John Beeching, Tunbridge Wells.

Thomas Burn, jun., Sunderland.

James Frederick Beaver, Salford.

John Crews Dudley, Oxford.

William Flamank, Newton Abbott.

Fairfax Franckin, Attleburgh, Norfolk.

Thornton Fenwick, Stockton.

Thomas Houghton Hodgson, Carlisle.

Richard Lambert, Newcastle-upon-Tyne.

Thomas Henry Morgan, Chepstow.

David Manser, Rye.

John Owen, Manchester.

William Henry Reece, Birmingham.

Henry Cawdron Stenton, Southwell, Nottingham.

Charles Sharood, Hurstperpoint, Sussex.

John Saxelbye, Kingston-on-Hull.

John Taunton, Oxford.

James Wood, Bradford, York.

William Wood, Pontefract.

Robert Benjamin Wheatley, Staines.

### NOTES OF THE WEEK.

#### RESTORATION OF MINISTERS AND LAW OFFICERS.

THE changes which have taken place in the Cabinet since we last addressed our readers, extraordinary as they were, do not concern us

to notice, further than to put on record that Lord Lyndhurst continues to be Lord Chancellor, Sir Frederic Thesiger the Attorney-General, and Sir Fitzroy Kelly the Solicitor-General of England, and that Sir Edward Sugden still holds the Great Seal of Ireland, and no change has taken place in the other law offices, either there or in Scotland.

Although the dignitaries and officers of the law thus remain at their several posts, the restored premier has yet to make his arrangements with them. The Lord Chancellor may not agree with the minister on the great question which occasioned the recent resignation, or his lordship, after his late severe indisposition, may choose finally to retire from office. In either case it is, we believe, quite uncertain who will be the noble lord's successor.

It may be convenient, for future reference, to state the dates of resignation of each of the great leaders. That of Sir Robert Peel took place on the 10th, and of Lord John Russell on the 20th instant.

Parliament has been prorogued from the 30th instant to *Thursday*, the 22nd *January*, and it will then assemble "for the dispatch of business." The promoters of railways will rejoice at this arrangement.

#### LEGAL OBITUARY.

*Dec. 17.*—John William Smith, Esq., of the Inner Temple, Barrister-at-Law, aged 38; author of many useful works; amongst others, of the well-known "Leading Cases"—in the notes to which, especially in the 2nd edition, great research, learning and judgment are displayed. He was the author also of a Compendium of Mercantile Law, now in the 3rd edition; also of an Epitome of the Law of Patents, and an Elementary view of the Proceedings in an Action at Law:—all of them excellent of their kind.

Mr. Smith was for three years the Common Law Lecturer at the Incorporated Law Society, where he much distinguished himself for the judicious choice of his subjects, and the skilful and accurate manner in which he treated them. He was, indeed, one of the comparatively few men whom the whole of the profession united in esteeming as amongst the soundest lawyers in Westminster Hall. His loss is much regretted by all branches of the profession.

Dec. 21.—John Teesdale, Esq., solicitor. He had been in practice upwards of 42 years, having been admitted on the roll in 1803. He was the senior partner in the eminent firm of Teesdale, Symes, Weston, and Teesdale. He was solicitor to the Duchy of Lancaster, the Corporation of the Trinity House, the London Dock and other public companies. From its commencement he was one of the most efficient members of the committee of the Incorporated Law Society, and served the office of Chairman. As a further proof of the esteem in which he was held by his brethren, he was honorary secretary to the Lowtonian Society and the City Solicitors' Club. He possessed, indeed, the universal respect and regard of all who knew him, whether members of the bench, the bar, or his own branch of the profession.

We have also to express our regret at the death of Mr. Thomas Ellis Adlington, formerly one of the sworn clerks on the equity side of the Court of Exchequer, and since its abolition one of the senior clerks in the Registrar's Office in Chancery. He died on the 16th instant, aged 45. He was nephew to the late Mr. Adlington of Bedford Row.

#### FEEs OF COUNSELs' CLERKS.

A question has been raised before the Master of the Rolls, relating to the right of the clerks of Queen's counsel to retain 7s. 6d. for a conference fee instead of 5s., as stated in Lord Cottenham's Order of 5th Nov. 1840. The matter is under consideration, and we shall advert to it in an early number.

### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

##### 27TH ARTICLE OF ORDER 16 OF 1845.

*Where the time within which a plaintiff is entitled to procure the master's report upon exceptions for insufficiency has expired without the report having been procured, through the accidental error of the plaintiff, in referring the exceptions to the wrong master, the court made an order referring the exceptions to the master, notwithstanding the lapse of time.*

THIS was a motion for an order to refer exceptions to the defendant's answers for insufficiency, to Sir W. Horne, under the following circumstances:—Three applications had been made in the cause, at different times, for further answer. These applications had been made before Sir W. Horne. The answer was put in on the 25th of April last: numerous exceptions were taken to it for insufficiency, which were filed on the 9th of June; and on the 20th of that month an order was obtained

referring them to the master. But by an accidental oversight they were referred to the master in rotation, who was Master Brougham. On the 30th of June, a warrant was taken out to attend before Master Brougham on the 2nd July, when the plaintiff appeared, but was stopped from proceeding by the objection that the exceptions ought to have been referred to Sir W. Horne. On the same day the error in the reference was corrected, and a warrant taken out to attend before Sir W. Horne upon the 4th. On that day Sir W. Horne was prevented from hearing the exceptions by the funeral of Sir W. Follett, and could not give the plaintiff another day before the 11th, when it was contended that the fourteen days allowed by the 12th Order of 1828 (answering to the 27th article of the 16th Order of 1845) having expired on the 4th, the order must be considered as abandoned. The master being of this opinion, a motion was made on the 21st of July, that the exceptions might be referred to Sir W. Horne, notwithstanding the delay which had taken place. The motion stood over till the first day of last term, to procure an affidavit that the error in obtaining the order of reference was accidental; and it again stood over till this day to give the plaintiff time to answer affidavits in opposition, which had been filed by the defendant.

Mr. Kindersley, for the motion.

Mr. Greene, contra.

Lord Langdale made the order, expressing himself satisfied that the error and consequent delay was purely accidental.

*Tuck v. Raymond*, Dec. 10, 1845.

#### Vice-Chancellor of England.

##### COSTS.—DISCOVERY.—BILL TO PERPETUATE TESTIMONY.

*On a bill to perpetuate testimony; if no commission has been issued, the defendant is entitled to his costs of the discovery given, although he has examined witnesses in chief. The same rule is applied in this respect to a bill to perpetuate testimony as to a bill for discovery only.*

THIS was an application for the costs of so much of a bill to perpetuate testimony, as related to the discovery given in the cause. No commission had been issued, the witnesses having been examined in London, but the defendant had examined witnesses in chief.

Mr. Cooper and Mr. Jervis for the motion, contended, that the costs of the discovery and of the examination, were quite distinct, and that the defendant had a right to the former since no commission had been issued, notwithstanding the examination of the witnesses. They cited *Anon.*, 8 Ves. 69; 1 Newland's Ch. Pr. 391, 2nd ed.; 2 Fow. Ex. Pr. 293; and 1 Sid. Smith's Pr. 504, 2nd ed.

Mr. Rogers, contra, contended, that the passage cited from Newland showed, that in a bill to perpetuate testimony the right claimed did not exist, where the defendant had used the

bill for his own purposes, as he had done in this case.

The *Vice-Chancellor* said, he did not see any difference between a bill of discovery, and one to perpetuate testimony; evidence might be taken in each. He thought, therefore, that the same rule must be applied to each, and the defendant have his costs of the discovery.

*Shrine v. Pocell*. Dec. 15, 1845.

#### ORDER 114 OF 1845.—DISMISSAL OF BILL.

THIS was a motion to dismiss the bill, on the ground that more than two months and four weeks had elapsed since the replication had been filed, and that the plaintiff had taken no further step. The replication was filed before the new orders came into operation, and no subpoena to rejoin had been filed.

Mr. Southgate, for the motion.

Mr. Wilcos, contra.

His Honour refused the motion.\*

*Hemming v. Dingwall*, Dec. 17, 1845.

#### Queen's Bench.

(Before the Four Judges.)

#### MONEY HAD AND RECEIVED.—STAKEHOLDER.—CHOSE IN ACTION.

Several persons subscribe sums of money to abide the event of a horse-race. The money is deposited in the hands of a stakeholder. Each party draws a ticket containing the name of a horse, and the money is to be paid to the person who draws the winner of the race. A. draws the ticket containing the name of the winning horse, and transfers his ticket to B., who sues the stakeholder in an action of money had and received. Held, that B. could not recover against the stakeholder, on the grounds that there was no privity between the parties in the first instance, and that the transfer of A.'s interest in the ticket to B. was a mere assignment of a chose in action.

THIS was an action for money had and received. A number of persons subscribed to a Derby lottery. Each person paid a certain sum of money, and had allotted to him a ticket containing the name of one of the horses that were entered for the race. The defendant was the stakeholder, and it was his duty to pay the money subscribed to the person who drew the winning horse. A. B. drew the ticket containing the name of the horse which won the race, and he transferred his ticket to the plaintiff, who claimed the amount of the subscriptions from the defendant. At the trial the plaintiff was nonsuited, on the ground that there was no privity of contract between the plaintiff and the defendant, the plaintiff not being the person who paid the money to the defendant, or who drew the ticket containing the name of the horse which won the race.

Mr. Pigott applied for a rule to show cause why the nonsuit should not be set aside and a new trial had. The defendant is under an obligation to pay over the money subscribed to the person who presents the ticket containing the name of the horse which won the race. The defendant is in the situation of a person who acts for a principal who is unknown at the time. As soon as such person is ascertained by the production of the proper ticket, the defendant is legally responsible to him for the money deposited in his hands.

*Csr. adv. vult.*

Lord Denman, C. J., delivered judgment.—This was an action in the form of money had and received, to recover a sum of money which it was alleged the defendant undertook to pay to the winner of a subscription, such winner being known by holding the ticket containing the name of the horse that won a race at Epsom. There was an objection to the plaintiff recovering, on the ground that he was not the person who had paid the money to the defendant and drawn the ticket with the name of the winner on it. It is contended, therefore, that the plaintiff cannot recover for want of privity between him and the defendant in the first instance. The defendant held the money for the benefit of the person who originally subscribed, and he remained liable to that person alone. There is nothing in the fact that that person assigned his interest in the ticket itself to the plaintiff, for that is a mere assignment of a chose in action. The nonsuit, therefore, was right, and the rule for a new trial must be refused.

Rule refused.

*Jones v. Parker*, Michaelmas Term, 1845.

#### Queen's Bench Practice Court.

##### AFFIDAVIT SWORN BEFORE CONSUL.

A British consul, resident abroad, has authority to administer oaths and take affidavits only in those cases in which oaths and affidavits may be taken and administered by a magistrate in England. Held, therefore, that an affidavit of service of a rule to show cause, sworn before the British consul at Paris, is not receivable.

Swann had obtained a rule to show cause why a *scire facias* should not issue to revive a judgment more than fifteen years old; and he now (Nov. 24) moved to make the rule absolute, upon (amongst others) two affidavits, one of them being an affidavit of service of the rule nisi upon one of the defendants in Paris, and purporting to have been sworn before and sealed by the British consul resident at that city; and the other, an affidavit made by a gentleman in the Foreign Office, in Downing Street, verifying the signature and seal of the consul, and deposing that the person before whom the first-mentioned affidavit was sworn held that office. It was submitted that an affidavit of service so sworn and verified is properly receivable, inasmuch as by the law of

\* See *Lovell v. Blew*, ante, p. 157.

France no magistrate in that country could administer an oath.\* It is true that in *ex parte Lady Hutchinson*, 4 Bing. 606, the Common Pleas held, that an affidavit of the caption of a fine, taken before a British consul at Boulogne, was insufficient; but in the subsequent cases of *Davy v. Maltwood*, 2 M. & G. 424, and in *re Pickersgill*, 6 M. & G. 250, that court received affidavits verifying certificates of the acknowledgment of deeds by married women, under the statute 3 & 4 W. 4, c. 74, s. 85; although in the former case the affidavit was sworn at St. Petersburg, before the British consul there resident, and in the latter at Moscow, before a person described as the "minister of the British chapel, Moscow." [Patteson, J.—In *Le Veux v. Berkeley*, 2 Dowl. & L. 31, we seem to have held, that the British consul at Paris has no authority to take affidavits in general.†] But in that case neither *Davy v. Maltwood*, nor the fact that in France a magistrate has no power to administer an oath, were brought under the notice of the court. [Patteson, J.—A consul derives his authority to administer an oath from the stat. 6 Geo. 4, c. 87, s. 20; and in *ex parte Lady Hutchinson* it was determined that this statute only gave him authority to administer such oaths as might be administered by a magistrate in England. Now, an English magistrate would have no power to take such an affidavit as that in question.] Nor would he to take affidavits in lunacy; yet in *Dyce Sombre's case* many affidavits, sworn precisely as in the present case, were received by the Court of Chancery. [Patteson, J.—I do not see how the Court of Chancery, or any other court, can give authority to administer an oath. The recent cases in the Common Pleas arose upon *ex parte* proceedings under the statute 3 & 4 Will. 4, c. 74. This is a very strong measure, and, if sanctioned, would go the length of authorizing an affidavit to be sworn before any consul in the world, or even before the captain of a ship on the high seas.]

*Cur. ado. vult.*

Patteson, J., on Nov. 25, said, I have spoken to the Lord Chief Justice of the Common Pleas upon the recent cases in that court, and his lordship thinks that the practice allowed by them was not intended to extend beyond cases of acknowledgment under the statute 3 & 4 W. 4, c. 74, in which it had been thought that the usual rule might be relaxed. So *Le Veux v. Berkeley* is directly in point; and con-

sequently, the affidavit in question, as at present sworn, is insufficient.

Afterwards, upon the application of *Swans*,

The rule was enlarged.

*Williams v. Welch and another*, Michaelmas Term, Nov. 24 & 25, 1845.

### Eschequer.

#### SHERIFF'S FEES.—KEEP OF HORSES SEIZED.

And a sheriff having seized horses under a *fi. facias*, a third party claimed them; whereupon an interpleader order was made directing the sheriff, upon payment of a certain sum into court, and of his "possession money," to deliver the horses to the claimant. Held, that the sheriff had no right to detain the horses until he was paid for their keep.

A RULE had been obtained calling on one Webster, an officer of the sheriff of Westmorland, to show cause why he should not refund to one J. Safton the sum of three guineas, alleged to have been extorted from him as fees under colour of a writ of *fi. facias*. It appeared that the sheriff having seized certain horses by virtue of a writ of *fi. fa.*, J. S. set up a claim to the horses, upon which the sheriff took out a summons under the Interpleader Act, (1 & 2 Will. 4, c. 58, s. 6,) and on the 27th August, 1845, Platt, B., ordered "that on the claimant paying into court the sum of 30*l.*, or finding security to that amount, and on payment to the sheriff of the possession money from the date of the order, the sheriff should withdraw from possession of the goods seized,—the plaintiff to pay the possession money up to the date of the order, and the claimant from thence until the payment of money into court or security given; and that in default thereof, the sheriff to be at liberty to sell the goods and pay the proceeds of the sale into court; that a feigned issue be tried at the next assizes for Westmorland between J. S., the claimant, and the plaintiff in the action, as to whether the goods, when seized, were the goods of the claimant." On the 1st September, J. S. paid 30*l.* into court, pursuant to the above order, but the sheriff's officer refused to deliver up the horses unless he was paid, in addition to his possession money, the sum of three guineas for the keep of the horses from the 27th August to the 1st September. The feigned issue remained untried.

*Temple* showed cause.—A sheriff is entitled to the costs of the keep of cattle which he has taken in execution. [Alderson, B.—If he takes the cattle of a third party, he has no right to detain them until he is paid for their keep.] It is not yet determined to whom the horses belong. [Pollock, C. B.—The sheriff has been ordered to deliver back the goods to the claimant, and he must do so.] He had lawful possession of the horses, and consequently a lien for their keep, in addition to his possession money. [Alderson, B.—He can have no lien,

\* But this fact was not embodied in the affidavits.

† But, from the report of this case in 5 Q. B. 836, it would seem that the court came to no decision upon the point; for Lord Denman, C. J., (p. 841) is there reported to have only said that he "did not feel warranted in saying that the Common Pleas were wrong in *ex parte Lady Hutchinson*." And the report then states that the other judges concurred.



for the order directs him to give up the horses on receiving possession money.]

*Atkinson*, in support of the rule. — The sheriff gained no property in the horses as against the owner, and consequently was under no obligation to feed them. If the horses had died for want of food, the sheriff would not have been liable, as it was the owner's duty to keep them. The term "*possession money*" has a certain definite meaning, and does not include the keep of animals taken in execution. [*Pollock*, C. B.—The master reports to us that he should have allowed this charge under the following head in the table of fees made in pursuance of the 1 Vict. c. 55, "For any duty not herein provided for, such sum as one of the masters of the Court of Queen's Bench or Exchequer may, upon special application, allow."] Under that provision, the sheriff should have made a special application to the court or a judge for on allowance of these costs.

*Pollock*, C. B.—The court will ultimately do justice between the parties, when the feigned issue is disposed of. In the mean time, the question is, whether a sheriff who is ordered to deliver up cattle upon being paid "*possession money*," has a right to claim, in addition, the keep of the cattle. He has no such right. When the parties were before the learned judge at chambers, the sheriff might have asked to be allowed these expenses, and if the judge thought it right, he would have ordered accordingly. The rule must be absolute, with costs.

*Gaskell v. Sefton*. Exchequer. Michaelmas Term, Nov. 24, 1845.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From 25th Nov. to Dec. 19th, 1845, both inclusive, with dates when gazetted.*

Chalmers, Charles Boom, Weston-super-Mare. Dec. 19.

Chipperfield, Robert George, Canterbury. Dec. 2.

Damant, Henry, Cowes, Isle of Wight. Dec. 19.

Oldacres, Robert John Francis, Leicester. Dec. 16.

Rodham, Francis, Wellington, Somerset. Dec. 16.

Thomas, William Morgan, Langharne, Carmarthen, Dec. 16.

Willis, David Thomas, Winslow, Bucks. Dec. 16.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 25th Nov. to Dec. 19th, 1845, both inclusive, with dates when gazetted.*

Barrett, Joseph Radcliffe, and Charles Candell, 7, Copthall Court, Throgmorton Street, Attorneys and Solicitors. Dec. 19.

England, Thomas, and John Beaumont, Hellaewell, Huddersfield, Attorneys and Solicitors. Dec. 2.

Marsden, John, and John Moore Janson, Wakefield, Attorneys and Solicitors. Dec. 12.

Melland, William, and John Bradshaw, Chesterfield, Derby, Attorneys, Solicitors, and Conveyancers. Dec. 16.

Parkinson, Frederick Kidman, and John Bond Hayton, Gray's Inn, Attorneys and Solicitors. Nov. 28.

Shaw, George Ledger, and Frederick John Reed, 59, Friday Street, Cheapside. Nov. 28.

#### BANKRUPTCIES SUPERSEDED.

*From 25th Nov. to Dec. 19th, 1845, both inclusive, with dates when gazetted.*

Francis, Henry Feock, Cornwall, Agent. Dec. 12.

Greenstock, George, Weston-super-Mare, Ironmonger. Dec. 12.

Ledgard, Edward, Morefield, York, Oil Crusher and Wire Drawer. Dec. 19.

May, Samuel, and Pryce Motteram, Shrewsbury, Drapers. Dec. 2.

Simpson, Thomas, Stourbridge, Worcester, Livery Stable Keeper. Dec. 12.

Sutcliffe, John, jun., Halifax, York, Rectifier. Nov. 25.

Swallow, Joshua, Manchester, Share Broker. Dec. 2.

Thomas, Samuel, 21, Cornhill, Bullion Merchant. Dec. 9.

Wood, Constantine, formerly of Ryde, Isle of Wight, Hotel Keeper. Dec. 12.

#### BANKRUPTS.

*From 25th Nov. to Dec. 19th, 1845, both inclusive, with dates when gazetted.*

Atkins, George, Liverpool, Brewer. *Cazenove*, Off. Ass.; *Bridger & Co.*, 68, London Wall; *Dodge*, Liverpool. Nov. 28.

Baldwin, Benjamin, Henry Street, Liverpool, and of Old Jerry, London, Warehouseman. *Follett*, Off. Ass.; *Mardon & Co.*, Christchurch Chambers, Newgate Street. Dec. 2.

Bond, George, Coffee House Hotel, Epsom, Licensed Victualler. *Bell*, Off. Ass.; *Pile*, Castle Street, Holborn. Nov. 28.

Bromily, John, Bolton-le-Moors, Lancaster, Manufacturer. *Hobson*, Off. Ass.; *Sutton*, Princess Street, Manchester; *Glover*, Bolton. Dec. 2.

Buckley, Ralph, Dobcross Lane, within Saddleworth, Woollen Cloth Manufacturer. *Young*, Off. Ass.; *Spinks*, Great James Street, Bedford Row; *Redfearn*, Oldham; *Middleton*, Leeds. Dec. 12.

Butterworth, James, Manchester, Plumber. *Hobson*, Off. Ass.; *Johnson & Co.*, Temple; *Kershaw & Co.*, Manchester. Dec. 12.

Charles, Henry, Manchester, Commission Agent, and Share Broker. *Hobson*, Off. Ass.; *Fearnhead*, Clifford's Inn; *J. and W. Andrews*, Manchester. Dec. 19.

Clark, John, Crescent, Minorities, Merchant. *Johnson*, Off. Ass.; *Martin & Co.*, Mincing Lane. Dec. 2.

Collins, John, Salford, Common Brewer. *Pott*, Off.

- Ass.; *Gregory & Co.*, Bedford Row; *Cooper*, Manchester. Dec. 19.
- Cooke, Mark, of Denton, Manchester, Joiner, Builder, &c. *Fraser*, Off. Ass.; *Clarke & Co.*, 20, Lincoln's Inn Fields; *Brooks*, Ashton-under-Lyne. Nov. 28.
- Cooke, William, White Lion Inn, Egham, Victualler. *Edwards*, Off. Ass.; *Buchanan*, 1, Walbrook Buildings, City. Nov. 25.
- Cordaro, Frederick, Liverpool, Hatter. *Cazenove*, Off. Ass.; *Minshull*, Adelside Buildings, Liverpool; *Vincent & Co.*, London. Dec. 16.
- Craft, George, Hitchin, Herts, Baker. *Turquand*, Off. Ass.; *Chappell*, Quality Court; *Bensley*, Hitchin. Dec. 19.
- Edwards, John Charles, 59, Conduit Street, St. George, Hanover Square, Bill Broker. *Groom*, Off. Ass.; *Godden*, John Street, Bedford Row. Dec. 12.
- Ellary, William, Kidderminster, Ironfounder. *Valpy*, Off. Ass.; *Boycott & Co.*, Kidderminster; *Reece*, New Street, Birmingham. Dec. 12.
- Ellis, Thomas, Wisbech, St. Peter's, Ely, Boot and Shoemaker. *Johnson*, Off. Ass.; *Flaggate & Co.*, Essex Street. Nov. 28.
- Elliott, John, Brandon Hill, Bristol, Coal Merchant. *Acraman*, Off. Ass.; *Hassell*, St. Stephen's Avenue, Bristol. Dec. 5.
- Evans, John, 234, High Street, Shoreditch, Cheesemonger. *Johnson*, Off. Ass.; *Ashley*, Shoreditch. Nov. 25.
- Fay, William, Stall Street, St. James, Bath, Innkeeper. *Shattock*, Bath; *De Medina*, Argyll Square. Dec. 12.
- Findley, Thomas, Manchester, Plasterer and Painter. *Pott*, Off. Ass.; *J. and W. Andrew*, Manchester. Dec. 19.
- Forrester, Thomas M'Laren, 8, Gresham Street, Woolen Factor. *Groom*, Off. Ass.; *Sole & Co.*, 68, Aldermanbury. Nov. 28.
- Friedlanskey, Theodore, Birmingham, Chandler. *Christie*, Off. Ass.; *Corser*, Birmingham. Dec. 9.
- Gamble, Henry, Grimstone, Norfolk, Grocer. *Belcher*, Off. Ass.; *Hill & Co.*, St. Mary Axe. Dec. 9.
- Gill, William, Leadenhall Market, Poulterer. *Turquand*, Off. Ass.; *Tippetts*, Pancras Lane. Dec. 16.
- Graham, George, Thomas Addams, and Michael Bogle Macfarlane, Cheapside, Calico Printers. *Follett*, Off. Ass.; *Brace*, 24, Surrey Street, Strand. Dec. 19.
- Harris, Henry, 22, Leman Street, Goodman's Fields, Teacher at the Jews' Orphan Asylum. *Edwards*, Off. Ass.; *Watson*, Great Winchester Street, City. Dec. 12.
- Hellawell, Thomas Ibbetson, James Nortcliffe, and John Beaumont, Hellawell, Thornhill Briggs, Halifax, York, Dyers. *Hope*, Off. Ass.; *Taylor*, Nicholas Lane; *Clegg*, Bradford; *Cariss*, Leeds. Dec. 16.
- Howe, John, West Bromwich, Linen Draper. *Bittleston*, Off. Ass.; *Lloyd*, Milk Street; *Bartlett*, Birmingham. Dec. 19.
- Hulme, James, Fountain Street, Manchester, Paper Dealer. *Hobson*, Off. Ass.; *Abbott*, Charlotte Street, Bedford Square; *Atkinson & Co.*, Norfolk Street, Manchester. Dec. 16.
- Humphries, William, 58, Haymarket, Hotel Keeper. *Graham*, Off. Ass.; *Lewis*, Arundel Street, Strand. Dec. 16.
- Iles, Charles, 1, Lewinsmead, 2, Lower Maudlin Lane, Bristol, Grocer and Baker. *Hudson*, Bloomsbury Square; *Hopkins*, Bristol. Dec. 9.
- Jessup, James, Princes Place, Notting Hill, and William Johnson, Queen's Road, Holloway, Builder. *Belcher*, Off. Ass.; *Keighley*, 77, Basinghall Street. Dec. 19.
- Jones, Michael, 48 and 49, Theobald's Row, Grocer. *Bell*, Off. Ass.; *Miles*, Brunswick Place, City Road. Dec. 16.
- Kearton, William, 13 and 14, Lambeth Street, Spitalfields, Cheesemonger. *Belcher*, Off. Ass.; *Hutchison*, Crown Court, Threadneedle Street. Dec. 16.
- Kelsey, John, Manchester, Joiner and Builder. *Fraser*, Off. Ass.; *Fearnhead*, Clifford's Inn; *J. and W. Andrew*, Manchester. Dec. 19.
- Lang, Lucy, and Ann Bayley Smith, 33 and 11, Charter-house Square, Boarding-house Keepers. *Johnson*, Off. Ass.; *Hindmarsh & Co.*, Jewin Crescent. Nov. 28 and Dec. 2.
- Leadbitter, John, Manchester, Merchant, Manufacturer of Shirtings, and Calicoes. *Fraser*, Off. Ass.; *Abbott*, 10, Charlotte Street, Bedford Square; *Atkinson & Co.*, Manchester. Dec. 19.
- London, William, sen., and William London, jun., Exeter, Curriers. *Hernaman*, Off. Ass.; *Terrill*, St. Martin's Lane, Exeter. Nov. 25.
- Le Roy, Eugene, 61, Upper Norton Street, Portland Place, Wine Merchant. *Johnson*, Off. Ass.; *Lewis*, Wilmington Square. Dec. 5.
- Lewis, John, Tipton, Stafford, Grocer. *Valpy*, Off. Ass.; *Motteram & Co.*, Birmingham. Dec. 19.
- Lewis, William, Barnsley, York, Tobaccoist and Tea Dealer. *Hope*, Off. Ass.; *Sudlow & Co.*, Chancery Lane. Dec. 9.
- Lingard, Frederick, 18, New Elvet, Durham, Teacher of Music. *Wakley*, Off. Ass.; *Brigden*, Durham; *Hartley*, Southampton Street, London. Dec. 12.
- Little, George, 7, Southampton Terrace, Camden Town, Omnibus Proprietor. *Edwards*, Off. Ass.; *Hardman*, 12, Bowling Green Street, Kennington. Nov. 25.
- Luce, Charles Kendal, Draper. *Pennell*, Off. Ass.; *Combe*, 9, Staple Inn. Dec. 9.
- Mann, Joseph, Warwick, Grocer. *Whitmore*, Off. Ass.; *Nicks*, Warwick; *Smith*, 40, Temple Street, Birmingham. Dec. 5.
- Maylard, John, 120, Fetter Lane, Grocer. *Edwards*, Off. Ass.; *Johnson*, 4, Walcot Square, Lambeth. Dec. 2.
- M'Dermott, James, Albert Public House, Gray's Inn Lane, Victualler. *Graham*, Off. Ass.; *Hunt*, Barnard's Inn. Dec. 5.
- Moger, Thomas, Holborn Hill, and of Coventry Street, Haymarket, Poulterer. *Bell*, Off. Ass.; *Kiss & Co.*, Fenchurch Street. Dec. 12.
- More, Richard, Norwich, Coal Merchant. *Turquand*, Off. Ass.; *Jay*, Bucklersbury. Nov. 25.
- Mortimer, Thomas, East Lane, Walworth, Victualler. *Johnson*, Off. Ass.; *Harpur*, Kennington Cross. Dec. 9.

- Oakleston, William, Liverpool, Hide Merchant. *Turner*, Off. Ass.; *Norris & Co.*, Bartlett's Buildings; *Norris*, Liverpool. Dec. 9.
- Palmer, Andrew, Feltham, Norfolk, Druggist. *Turgand*, Off. Ass.; *Inneson & Co.*, 40, Norfolk Street, Strand. Nov. 28.
- Phillips, Samuel, Kingston-upon-Hull, Hatter. *Hope*, Off. Ass.; *Capes & Co.*, Gray's Inn; *Colbeck & Co.*, Hull; *Horsfall & Co.*, Leeds. Dec. 2.
- Pool, Thomas, 9, Princess Road, Notting Hill, Builder. *Groom*, Off. Ass.; *Wright*, Cook's Court, Lincoln's Inn. Dec. 16.
- Pope, John, formerly of Backfields, Bristol, then of Horfield, Gloucester, then of Montpelier, Bristol, Lime Burner, &c. *Hudson*, Bloomsbury Square; *Hopkins*, Bristol. Dec. 9.
- Poulton, John, jun., Chapel Street, Luton, Beds. Straw Hat Manufacturer. *Green*, Off. Ass.; *Messrs. Dynes*, Lincoln's Inn Fields; *Waring*, Luton. Dec. 9.
- Ratnett, Thomas, Cambridge, Tailor and Robe Maker. *Follett*, Off. Ass.; *Wilkin*, 3, Fournival's Inn; *Hunt*, Cambridge. Dec. 9.
- Redwood, Edward, jun., now of 16, Windmill Street, Lambeth, and late of 31, Upper King Street, Bloomsbury, China and Glass Dealer. *Bell*, Off. Ass.; *Long*, King Street, Cheapside. Dec. 2.
- Reynolds, James, Fazakerley, Farmer. *Bird*, Off. Ass.; *Bridger & Co.*, London Wall; *Dodge*, Fenwick Street, Liverpool. Dec. 16.
- Robinson, Henry, 2, Copthall Chambers, Share Broker. *Graham*, Off. Ass.; *Spiller*, Camomile Street. Nov. 28.
- Roper, John Land, High Street, Rochester, Linen Draper. *Follett*, Off. Ass.; *Badham & Co.*, Verulam Buildings, Gray's Inn. Nov. 25.
- Rothchild, Joseph, late of the Lower Arcade Bristol, Watch Maker. *Hudson*, Bloomsbury Square; *Hopkins*, Bristol. Dec. 12.
- Rowbotham, Henry, and Robert Johnson, Kenworthy, Brinksway, near Stockport, Chester. *Hobson*, Off. Ass.; *Gregory & Co.*, Bedford Row; *Hitchcock & Co.*, Manchester, Dec. 12.
- Russel, Charles Joseph, Ludlow, Salop, Scrivener. *Bittleston*, Off. Ass.; *Motteram & Co.*, Bennet's Hill, Birmingham. Nov. 25.
- Samford, Frederick, Manchester, Woollen and Linen Draper, &c. *Pott*, Off. Ass.; *Reid*, Bread Street, Cheapside; *Sale & Co.*, Manchester. Dec. 9.
- Sheppard, Robert Watson, Ensham, Oxford, Innkeeper and Auctioneer. *Follett*, Off. Ass.; *Pownall & Co.*, Staple Inn; *H. and J. Walsh*, Oxford. Dec. 9.
- Smith, Thomas, and George Smith, Bishop Auckland, Ironmongers and Plumbers. *Wakley*, Off. Ass.; *Hoyle*, Newcastle-upon-Tyne; *Craiby & Co.*, 3, Church Court, Old Jewry. Nov. 28.
- Spedding, Robert George, 59, Queen Street, Cheapside, and Bush Lane, Zinc Manufacturer. *Turgand*, Off. Ass.; *Taylor*, 12, North Buildings. Dec. 9.
- Spong, John, Oakham, Surrey, Coal and Timber Merchant. *Pownell*, Off. Ass.; *Jordeson*, 2, St. Mary-at-Hill, London. Dec. 5.
- Taylor, William Guy, and Elizabeth Guy, Lord Street, Liverpool, Hosiers. *Morgan*, Off. Ass.; *Reed*, Friday Street, Cheapside; *Greatley*, Castle Street, Liverpool. Dec. 2.
- Taylor, Frederick, 3, Orange Street, Red Lion Square, Wax and Tallow Chandler. *Bell*, Off. Ass.; *May*, Queen's Square, Bloomsbury. Dec. 12.
- Tucker, Arthur Southcombe, and George Muriel Bidwell, Melcombe Regis, Dorset, Tea Dealers. *Green*, Off. Ass.; *Knight*, 17, Basinghall Street; *Cook & Co.*, 1, New Inn, Strand. Dec. 9.
- Wadhams, Charles, 40, Charlotte Street, Portland Place, New Road, Carpenter. *Groom*, Off. Ass.; *Gore*, South Molton Street, Oxford Street. Nov. 25.
- Warren, John, 32, George Street, Hanover Square, Surgeon. *Whitmore*, Off. Ass.; *Buchanan*, Basinghall Street. Nov. 25.
- Watt, George, 8, Old Jewry, Linen Factor. *Green*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. Dec. 12.
- Whitworth, Frederick, Shawforth, Rochdale, Cotton Manufacturer. *Pott*, Off. Ass.; *Clarks & Co.*, 20, Lincoln's Inn Fields; *Whitehead*, Rochdale. Dec. 12.
- Williams, John Dyer, 2, Newcastle Street, Farringdon Street, Blacking Manufacturer. *Edwards*, Off. Ass.; *Austin*, 25, St. Swithin's Lane. Dec. 9.
- Woodhams, John, 47 and 60, High Street, Portland Town, Plumber. *Groom*, Off. Ass.; *Chamberlayne*, Great James Street, Bedford Row. Nov. 25.

### THE EDITOR'S LETTER BOX.

WE think that a party wishing to spend the last year of his clerkship with a firm in London, not the agents of the country attorneys to whom he is articled, must be assigned to make such last year a legal service. The country attorneys cannot, we think, authorise a London firm to be their agent, merely for the purpose of such service. There must be a *bond fide* professional agency.

We are not aware that an attorney's clerk, (not articled,) if allotted to serve in the militia can claim any exemption as such clerk.

We have found room this week for the letters of some of our correspondents, but others are unavoidably deferred.

We shall probably further enlarge our space with the new year, and thus be enabled to adopt some suggested additions, particularly that of the Digest of Cases.

We cordially thank our subscribers, both old and new, for their friendly support, and for the trouble they take in assisting our labours.

# The Legal Observer.

SATURDAY, JANUARY 3, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## PARLIAMENTARY PRACTICE REGARDING RAILWAY BILLS.

### SUBSCRIBERS' AGREEMENT.—PARLIAMENTARY CONTRACT.

THE standing orders of both houses require that an estimate of the expense of proposed railway works be made, and that a subscription be entered into, under the parliamentary contract, “to three-fourths the amount of the estimate.” This merely means that the parties are to be *bound* to the extent specified.

But the standing orders are not satisfied with seeing that the parties are bound. They further require that a *deposit* shall be made; both as affording some indication of solvency on the part of the projectors, and also as giving a sort of guarantee to parliament that the scheme for which its sanction is sought will, if adopted, be carried into ultimate execution.

With a view to these objects, the standing orders which were in force in the beginning and towards the close of last session required that a sum equal to one-twentieth part of the amount subscribed should be deposited in the Court of Chancery; to which requisition the Lords annexed this additional provision, namely, “that not less than three-fourths in number of the subscribers should pay up their shares of such deposit.” It was therefore not sufficient that a sum of money equal

to a twentieth part of the amount subscribed was proved to be standing to credit of the promoters in the Court of Chancery. It was indispensable to show, not merely that that sum was placed there, but “that three-fourths in number of the subscribers had paid up their shares of it:”—an exaction peculiarly preposterous, and one, moreover, which would have operated as a great hardship and injustice, did it not admit of being easily evaded. It was obnoxious, however, as encouraging a juggle whereby parties who, perhaps, had not one farthing to rub against another, were enabled, by the connivance of others who were affluent, to make a show of paying, in their own names, what in fact was the money of those who, for the salvation of the scheme, were obliged by an artifice to give a colourable compliance to the demands of this ill-considered order. No wonder, then, that it has since been superseded, as will presently appear.

In the vain hope of repressing the rage of speculation, and lightening the load of railway business in parliament, it was determined, in August last, to require double the amount of these deposits; that is to say, to require that a sum equal to one-tenth, instead of one-twentieth, of the amount subscribed should be deposited in the Court of Chancery, as a preliminary to be proved to the satisfaction of the committee appointed to ascertain compliance with the standing orders. This important regulation was adopted, we believe, by the Commons first, and by the Lords after.

The order made, however, was not in-

tended to be retrospective. It would have been monstrous to extend its operation to companies constituted under the old regulation. Accordingly, a line was drawn. Now the thing to be lamented is, that the two houses, in their wisdom, did not think it proper or expedient to agree as to this line. And thus has arisen the unhappy embarrassment to which we adverted in our article of last week.

It is necessary to look very critically, and to consider very carefully, the orders thus made in August last, before the difficulty to which they have given birth can be fully appreciated.

The order of the Lower House says that one-tenth part of the amount subscribed shall be deposited, "provided, however, that this order shall not apply to any railway bills which have been before parliament during the present session, and which may again be introduced in the next session: or which are already provisionally registered; or the subscription contract for which may be already executed, or partly executed, on the 29th day of July: but with respect to such bills, a sum equal to one-twentieth of the amount subscribed shall be deposited."

Here, therefore, is a saving, not only of cases which were actually before parliament last session, but of cases of provisional registration, or in which the contracts were executed or partly executed on or before the 29th of July. For these, by this order of the Commons, a deposit of one-twentieth part will be sufficient.

But by the Lords' order, dated 7th August last, a deposit of one-tenth is required of all railway companies, excepting such as had their bills before parliament in the last session. Not a word is said about those then provisionally registered, or whose contracts may have been executed on or before the 29th of July: these, unless their bills were before the legislature in the last session, are by the Lords' order bound to show a deposit of a tenth, and not merely of a twentieth, part of the amount subscribed.

In this confliction of standing orders, three distinct courses have been suggested for adoption, where parties are within the protection of the Commons' order, but beyond that of the Lords' order.

One course is, to make a deposit of a tenth part before going to the House of Commons. This, where it is practicable, seems by far the safest course, and its adoption is facilitated by the circumstance

of its being no longer necessary now to show (as was formerly indispensable) that "three-fourths in number of the subscribers have paid up their shares of the deposit." This objectionable requisition is not continued in the standing order of the 7th of August last, — and it is well known that it was purposely and designedly omitted. We apprehend it is therefore clear, that if the amount required be lodged in due time in Chancery, the Lords will no longer inquire by whom or by what machinery it was placed there. When once it is shown that the exigency of the standing order has been substantially satisfied, it will most probably be held by the Lords that a sufficient compliance has been established.

Another plan is, to go to the Commons with a deposit of a twentieth part of the amount subscribed, and to defer compliance with the Lords' standing order till it is first seen that the merits of the bill are such as to secure the sanction of the Lower House. There is much to be said in favour of this course of proceeding. Above all other recommendations, there is this palpable one, namely, that after a bill has worked its way through the fiery ordeal of the popular tribunal, the expectations of ultimate success in the House of Lords will be so much increased, that parties, instead of hesitating to pay up the necessary supplies, will in many cases be eager to do so. We have reason to know, accordingly, that several well-advised associates are pursuing this course.

A third course is, before going to the House of Lords, to have a new parliamentary contract prepared and executed, showing by its schedule a deposit of a tenth of the amount subscribed. The objection to this plan is, that it is impracticable. Any one who will think the matter over for a few minutes will see that it would be impossible to prevail on parties who have parted with their scrip to execute a deed involving them afresh in obligations from the stringency of which they had hoped to have escaped. We can see nothing in the standing orders from which it can be reasonably inferred that matters will be mended either by a new deed, or by a supplemental schedule, which we believe some gentlemen, whose opinions we greatly respect, have recommended. Our humble advice to parties who are in the dilemma to which we have adverted, is, to rely upon a substantial *bona fide* satisfaction of the standing orders,

rather than attempt a literal compliance with them,—which latter, in truth, is an impossibility.

## LECTURE ON THE AMENDED REAL PROPERTY ACT.

Mr. Cayley Shadwell, in commencing his lectures on this act, observed, that in considering the Assignment of Terms Act, they had frequently had occasion to lament the haste and precipitation with which it had been passed, and to point out the very numerous contingencies for which it did not seem to have provided. But no such objection applied to the act 8 & 9 Vict. c. 106, entitled "An Act to amend the Law of Real Property;" for the preparation of this act had been entrusted to three conveyancers of great eminence, Mr. B. Kerr, Mr. Hayes, and Mr. Christie; the subject matter which they had to deal with had been very much canvassed by the profession in considering the enactment of the former year; the draft of the bill that they prepared was circulated pretty extensively, so as to have the benefit of the suggestion of others, previous to its final settlement; and what must be felt to be an immense advantage, the bill, as they did finally settle it, was permitted to pass through both houses with very little alteration, so that the act appears almost as it was originally designed by its learned framers.

In endeavouring to master the contents of this new statute, and of the various alterations it made in the law and practice of conveyancing, the profession had one very singular advantage—a statement, namely, by the framers of the measure, of the objects they had in view in preparing the various clauses and of the reasons that led them to their conclusions—arguing on the questions before them, as well the points that they had omitted, as the points that they had provided for. This statement was contained in a letter addressed to the Lord Chancellor by Mr. Bellenden Kerr, which was printed and privately circulated with the proposed bill, at the time of its introduction into the House of Lords. It had, however, been since published in Mr. Davidson's *Precedents in Conveyancing*, 2d edition, and that with the permission of Mr. Kerr, so that now it must be considered public property; and it would be found of the greatest assistance in the examination of the act, it bearing the same sort of relation to this act, that the Reports of the Real Property Commissioners bore to the acts that those commissioners originated.

The scheme of the present act was to repeal altogether the act of 1844, 7 & 8 Vict. c. 76,

entitled, "An act to simplify the Transfer of Property," and then to re-enact such parts only of the repealed act as the framers were satisfied there was no doubt as to the principle of, while they took care that the language of the new enactment should not be liable to the various objections that had been taken to that of the repealed statute.

In the letter alluded to, the framers of the present statute say,—"Though most of the various objects which that act (the Act to simplify the Transfer of Property) embraces, are of a practical and beneficial character, and ought to be included in any comprehensive scheme for ameliorating the law of property, yet the apparent expediency of some of its provisions, except, perhaps, as parts of such a scheme, and the confessedly imperfect frame of others, induce us to recommend as the clearest and safest course, that the act should be wholly repealed, and the clauses of which the policy is unexceptionable be re-enacted in a different form.

"We are quite sensible of the difficulty and danger attending any attempt at legislation on detached points of a contemplated system, especially where the proposed changes tend to contradict principles on which that system is based; and we have therefore approached the subject not without considerable diffidence. The conviction that such partial remedies cannot be too cautiously applied, has induced us to review the act with the intention,—first, of confining it to points which may safely admit of thus being separately treated; and secondly, of legislating upon those points with greater accuracy and perspicuity. But although we have prepared the bill now submitted to your lordship, after the merits and defects of the existing act had been amply discussed by the profession, it is yet very possible that we may have failed, either to select for omission the objectionable portions only, or to enhance, by alterations in arrangement and expression, the practical value of the rest. The result, indeed, of some recent statutes has shown, that the most elaborate enactments differ from the least accurate only in the degree of help, which they require from judicial exposition."

Mr. Shadwell then stated, that it might perhaps be useful to recall shortly to recollection the history of the repealed statute.

The first thing that struck the reader upon running down the marginal notes of its various clauses, was their extremely miscellaneous character. Unlike the Assignment of Terms Act, which deals or professes to deal with only one well-defined head of law, the Transfer of Property Act professes to remedy inconveniences of the most various kinds; and as many of the matters of which it treats are not such as often occur in practice, it would probably have been a very long time indeed before the efficacy of many of its enactments had been tested by judicial decision,—unlike in this also to the Assignment of Terms Act, which meeting one

in almost every abstract of title one looks into, cannot possibly, if it escape repeal, long remain without attracting the notice of the courts. The miscellaneousness of the Transfer of Property Act, and the remoteness from ordinary practice of many of its clauses, were both to be accounted for by considering its history. When the Real Property Commission was abruptly put an end to, there were many suggestions of alteration under the consideration of the commissioners, and rough drafts of several clauses had been prepared by one or other of its members, but little or nothing had been done towards digesting into method, the heterogeneous materials that had been collected. After some time a feeling arose, that as the result of what the commissioners had completed was found to be so valuable, it was a pity that any part of their labours should be lost, and it was this feeling that led in 1844 to the introduction into parliament of a bill, embodying what in fact were little more than loose memoranda of that which the commission had left behind them.

The bill was introduced by the Lord Chancellor, but no name had ever been mentioned as the framer of it as it stood on its introduction. When brought in, copies of it were circulated pretty freely among the profession, and various alterations and improvements were suggested, and upon the advice that was received it was considerably reduced in volume, about one half of the clauses of the bill as it originally stood having been struck out in its passage through the Lords. Several of the counsel consulted took great pains with particular parts of the bill, and if any one would take the trouble to compare the act as it stood, with the several parliamentary papers relating to its progress, he would see that the improvements here and there were very important; but still it was not to be expected, that men themselves engaged in active practice should give that laborious and exclusive attention which the case required, to a bill with which they had no particular concern and for which they were not responsible, and consequently the act passed at last full of all kinds of inaccuracies and blunders.

The lecturer then adverted to the outcry which the act occasioned, both in and out of the profession; but observed, that any minute criticism upon the parts of it open to observation would now be out of place, as the act was, at least for the future, entirely repealed.

There were, however, two sections of the repealed act to which it was proper to call attention, because they had not been re-enacted by the present statute, and whatever might be done hereafter, we are, at any rate for the present, remitted to the inconveniences of the old law. One of these inconveniences, that the repealed act attempted to remedy was this:—When a man died possessed of money secured to him by a mortgage in fee, the money which was personal estate, and the land which,

though in equity, considered as only an accessory to the money secured on it, still at law retained its character of real estate, followed a different course of devolution; the money vested in the executor or administrator, the mortgaged land in the heir or devisee. The heir or devisee to whom the mortgaged land descended, held it only on trust for the executor or administrator to whom the money belonged, and if, when the mortgage debt came to be paid off, the heir or devisee were a person *sui juris*, and willing to concur in a reconveyance to the mortgagor, there was no difficulty. But supposing this not to be the case, there were many impediments that might prevent a settlement. A very common one was a doubt on the will of the mortgagee, whether the mortgaged estate passed under it or descended to the heir at law. The question usually arose upon a devise in general words—"all my real estates whatsoever and wheresoever." Does a testator mean by a general devise of this nature to pass estates vested in him only as mortgagee? The solution of this question, which was often one of great difficulty, depended upon what were the directions of the will with respect to the property devised, as it could not be thought that a testator would intend to devise what was vested in him only as mortgagee in a manner that was inconsistent with his rights and duties as mortgagee, such as a trust to sell for the payment of his own debts, or upon strict settlement for the benefit of his family or the like.

The leading case upon this subject is *Lord Braybrook v. Inskip*, 8 Ves. 417, which related indeed to a devise of a trust estate, but which had always been held to apply equally to a devise of an estate held in mortgage. In that case the heir at law of a surviving trustee holding the trust estate upon trusts that were still subsisting made his will, and thereby devised all his real estates whatsoever and wheresoever, to his wife, her heirs, and assigns for ever, and he gave her all his personal estate and appointed her and another person executrix and executor. The heirs at law were two infants and a married woman. Lord Eldon held, that the trust estate passed by the will. His lordship, after taking a review of the cases, stated the rule to be—"That trust estates would pass under a general devise, unless it could be collected from expressions in the will, or purposes or objects of the testator, that he did not mean that they should pass." A very able comment upon this case of *Lord Maybrook v. Inskip*, and the cases that preceded and followed it, would be found in *Jarman on Wills*, vol. 1, p. 638 to 656. Mr. Jarman lamented, that Lord Eldon should have laid any stress on the extrinsic circumstance of the heirs at law being infants and a married woman, observing very justly, that to let in the consideration of these accidental circumstances was to weaken and perplex the rule.

This was one of the difficulties, which in paying off a mortgage, a mortgagor might have to encounter before he could get back his estate; it might be long before it was ascertained whe-

ther it was in the heir or the devisee of the mortgagee. Then again, whoever the legal estate was in—heir or devisee—might be a person not *sui juris*, an infant, a married woman, or a lunatic; or it might be impossible to find the heir, or there might be no heir at all, as in the case of an illegitimate person dying unmarried. It was true, that for most of these cases of disability provision was made by statute, the present act upon the subject being 11 Geo. 4, and 1 Wm. 4, c. 60, but this act gave relief only by means of application to the Court of Chancery, which even if administered in a summary way, as it might be on petition in a simple case, must still saddle the parties with a considerable expense which, particularly in small properties, it was desirable to avoid, and must often interpose a most inconvenient delay. The costs of an application under this act, to procure a re-conveyance from the heir of a mortgagee, were to be borne by the mortgagor upon the general principle, that the mortgagor pays principal, interest, and costs, although in this case the expense was incurred without any fault of his. *Ex parte Ommamey*, 10 Sim. 298; *Farren v. Earl of Winterton*, Equit. Exchq. Spring Sittings 1841, acc. MS. note furnished by Mr. Hodgson. Altogether, these circumstances occasionally attending the re-conveyance of a mortgaged estate appeared to be well worthy of the interference of the legislature, and that it would be highly desirable to invest with the power of reconveying the legal estate, the executor or administrator of a deceased mortgagee who is the person intrusted with the duty of receiving the money, provided only that the power were properly guarded so as not to be liable to abuse.

The Transfer of Property Act attempted to meet these requisitions by its 9th section, which was as follows:—

“That when any person entitled to any freehold or copyhold land by way of mortgage, has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgage, or the heir, devisee, or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender as the case may require, the legal estate which became vested in such heir or devisee, and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs or assigns.”

This enactment did not satisfy the framers of the present measure, and though, perhaps, judicial interpretations might have supplied the necessary qualifications to make it work well in practice; yet, in legislative changes, it was so much better to err on the side of caution than on that of rashness, that it was impossible

not to acquiesce in the judgment of those by whom at least for the present this provision had been withdrawn. The reasons for so withdrawing this part of the former enactment were thus given by Mr. Kerr:—

“As regards the 9th section, which provides for the conveyance of a mortgaged estate by the executor or administrator of the mortgagee, the design is good, but it is so imperfectly carried out by the very limited terms of the enactment, that practically the power is attended with very little real advantage. It is necessary, for the purposes of title, to ascertain that possession has not been taken, that no action or suit is pending, and that the legal estate is vested in the real representative of the mortgagee; for a mere negative allegation of these facts in the deed of conveyance would not satisfy a purchaser. But it is obvious that the necessity of proving these facts, and particularly the fact of the legal estate being vested in the real representative (the very difficulty often being, that the heir is unknown) destroys in a great measure the utility of the enactment. The clause, besides, authorises a conveyance only on actual payment to the executor or administrator of the whole debt;—not extending to a conveyance on part payment, or a conveyance under any arrangement for exonerating the whole or part of the lands without payment, nor to cases where the money has been paid in the mortgagee's lifetime, or the executor has received the money at a former period, or has assented to a bequest of, or has assigned the debt. And, moreover, as the power—a bare statutory authority—is not conferred on the proving executor alone, it might be considered (though not, we think, on a just view of the provision) necessary to its due execution, that an executor who had not proved, or had even renounced the probate, should join: a possible construction, which would not only narrow still further the range of the power, but probably implicate many titles depending on the contrary assumption. Another more material objection arises from the want of a precise definition of what shall, for the purposes of the act, be considered as falling within the term ‘mortgage,’ a term which, taken according to its strict legal acceptation, would exclude a large proportion of the transactions comprehended under the popular meaning of that term, and clearly within the mischief sought to be remedied by the clause in question; such a definition should therefore be given as would extend the benefit of the enactment to all cases where, according to the rules of a court of equity, a party is entitled to call for a conveyance of any property, pledged or charged as a security for money on satisfaction of the debt, whether the security be in the form of a mortgage, to which the right of foreclosure is incident, or of a conveyance to the creditor or his trustee upon trust to sell, or in any other form whatever. Some method, too, more satisfactory than the use of such terms as his ‘executor or administrator,’ should be devised for ascertaining the person



by whom, in every possible state of circumstances, the act is to be performed; for it is only by the expression of a rule of law in general and comprehensive terms that there can be any reasonable hope of attaining completeness or certainty. Then as regards the principle involved in this section of the act, if it be fit that a mortgagee's executor or administrator (who, after being paid in full, has no further interest in the matter, and who, as he might, be it observed, have recovered the debt although unable to make or procure a re-conveyance of the estate, may refuse to exercise the statutory power, vested in him as a mere instrument for the convenience of others,) should be enabled by his act to denude the heir or devisee of the real estate, and vest it in the mortgagor or his nominee, it must, *à fortiori*, be fit that the unpaid executor or administrator should be enabled to command the legal estate for the purposes of the security and the better administration of that portion of the assets of his testator or intestate. It can hardly be contended that the equity of the executor or administrator to have the full benefit of the unsatisfied and forfeited mortgage, is not as strong and as urgent, at least, as the equity of the mortgagor to have the full benefit of the redemption. In each case the same principle applies, and that principle, fairly carried out, would require that every person entitled to call for the legal estate should be enabled to obtain it with as little difficulty and expense as may be consistent with the safety to the rights of parties, and with the maintenance of the distinction between the jurisdictions of law and equity. In the actual state of the law, there are three modes by which a party equitably entitled may get in the legal estate:—1st. By obtaining,—often at a great expense, often on imperfect evidence, which leaves the title open to question,—a conveyance from the party in whom the estate is actually vested, if competent and willing to convey it. 2ndly. In certain cases of incapacity, absence, or refusal, by the still more costly remedy of an order of the Court of Chancery, made on a summary application by petition, pursuant to the acts relating to infant trustees, &c., but which application involves a reference to the master, with all its consequences. 3rdly. In cases not within those acts, (which are crippled by many unnecessary exceptions) at a still greater expense, by means of a suit in equity regularly instituted. Now all the cases to which the above acts extend fall within the principle of the power in question, enabling the executor or administrator of a mortgagee to convey; and that principle once admitted, should be adopted to its fullest extent, unless it can be shown that its general adoption would be productive of inconvenience. But if the general power were so framed as to make its exercise dependant on the fact of the right in equity to call for the legal estate being really in the party who makes the disposition, no undue advantage would be obtained, while the title would be relieved from the necessity which at present

exists of proving that the legal estate is vested in the party by whom (or by whose substitute) it is assumed to be conveyed. Having arrived at the conclusion that a free yet well considered application of the principle already admitted by the legislature is of the very essence of a wise and just amendment of the Law of Real Property, no attempt has been made to fit the existing clause to the particular case at which it is aimed. If, however, it should be deemed expedient to make a partial application of the principle,—to amend the law by engrafting upon it an anomalous provision,—the 9th section of the Transfer Act may be so modified as to attain more perfectly the very limited object of its framers."

There was one other section of the old act, which the new act omitted, relating to a matter of still greater importance than the one just considered; for its object was, to enable trustees for sale in all cases to give good receipts to purchasers, so as to prevent them from being bound to see to the application of the purchase money.

There were various distinctions that prevailed upon this subject of the power of trustees for sale to give good discharges, where they were not expressly authorised by the instrument under which they were appointed. For these the lecturer referred to Sugden's *Vendors & P.* 10th ed. vol. 3, p. 151, 17th chapter, "Of the obligation of a purchaser to see to the application of the purchase money." The numerous cases there cited were sufficient to show the importance of the subject, and the multitude of distinctions, and the necessity for alteration.

The rejected section had also another object, that of providing for a case which frequently occurred,—where trust money was lent on mortgage, and the trust not noticed in the mortgage deed, and no particular provision to meet the case, if one of the trustees died before the money were paid off, one of two things must be done, both of which were inconvenient: upon payment of the mortgage money, either the receipt of the representatives of the deceased trustee must be obtained, or it must be ascertained that the trustees had, according to their trust, power to receive and give good receipts for the money. The 10th section, 7 & 8 Vict. c. 76, providing for these objects, was as follows:—

"That the *bond fide* payment to and receipt of any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person from paying the same, from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security."

The learned lecturer then stated that the reasons for rejecting this section of the Transfer of Property Act were given by Mr. Kerr's letter as follow :—

"As regards the 10th section, which enacts that the payments to and the receipt of any person to whom any money shall be payable on any express or implied trust shall be a discharge, it is conceived that it never could have been in the contemplation of the framers of the act to render, in equity, the receipt of the person entitled at law under *every trust* whatsoever, (whether merely implied or otherwise,) an effectual discharge to the party paying. The effect of this new rule, if carried to its fullest extent, would be, to alter essentially one of the most important principles of a court of equity. It is conceived that the rule was intended to remedy an inconvenience of a much narrower extent. In equity, the person beneficially entitled is the person to concur in directing the payment to the trustee, except where the cestuique trust is unascertained or incompetent, or where there is some trust showing that the trustee was to have the money at his disposal for a particular purpose, (as that of re-investment, &c.,) or where there is an express declaration absolving the person paying from seeing to the disposition. The rules as to the liability of a party paying money to a trustee, without the concurrence of the cestuique trust, to see the money duly applied, have varied, and are not yet precisely defined. To avoid any question, it has been usual to accompany a trust for sale, &c., with a declaration that the receipt of the trustee shall be a sufficient discharge. This occasionally is omitted, and thence a difficulty may arise either in ascertaining whether the party paying is or is not bound to see to the ultimate disposition of the money, or in procuring the concurrence of the party entitled who may be abroad, &c. The evil goes to this extent only, but the remedy is far more extensive, and is one which a very slight consideration will show the danger of adopting. There can be no question but that it would be desirable to supply a fit remedy by ascertaining the state of the law as regards any discrepancies or uncertainties, and removing them, and so to extend the rule as to obviate all practical inconvenience. Perhaps a rule which, with some modification, should give every trustee having an express power to sell or raise money, an authority to give a receipt for it, would be advisable. And such a rule would be consistent with the 30th Order in Chancery,\* which renders it unnecessary to make the cestuique trusts parties to a suit where there are trustees competent to sell and give receipts; but if the clause as it stands in the act were to remain, it would of necessity lead to an alteration of the practice, and in all cases where there was a trustee of money under any trust, direct or implied, it would become unnecessary to make

the persons interested parties. The remainder of the section refers to the receipts of the survivors of mortgagees being effectual discharges.

"Similar objections apply to this branch of the clause,—trustees often lend money on mortgage and take the security to themselves as joint tenants, not noticing the trusts in the deeds, but generally there is inserted a declaration, that the receipt of the survivor shall be a discharge, thus negating the equitable tenancy in common. When this declaration is omitted and a trustee dies, it becomes necessary to show the trusts of the money and the power of the surviving trustees to give a receipt for it; and this evidence becomes part of the mortgagor's title. It was to remove this inconvenience that the clause was framed; but it goes far beyond the evil in question, by making the receipts of the survivor of *all* mortgagees who are at law joint tenants sufficient. Now, in practice many persons not trustees, &c. take securities in joint tenancy; and it would seem very inexpedient thus to repeal generally the salutary equitable rule as regards these securities, and to allow the survivor to possess himself of the whole funds without the concurrence of the representatives of the other equitable tenants in common. Supposing, however, that this part of the clause is retained, the expression of the rule in the statute being inaccurate it would require considerable alteration."

## POINTS IN COMMON LAW.

### WHEN THE PROPERTY IN CHATTELS PASSES, AS BETWEEN VENDOR AND PURCHASER.

THE question, when an article which has been the property of one person becomes the property of another,—or in other words, under what circumstances the property in goods passes,—is one which arises so constantly out of the dealings of mankind, that it is peculiarly desirable the legal considerations applicable to the subject should be clearly understood.

Where there is a contract for the sale of a specific article, and the article is actually delivered, although the rights of third parties may and do occasionally intervene, in general no question of property can arise between the vendor and the buyer. It is where the subject of the contract is not complete, or something remains to be done between the parties before delivery, that it so frequently becomes necessary to revert to the principles which govern this branch of the law.

The general rule is,\* that under a

\* Orders of 26th Aug. 1841.

\* See *Clark v. Spence*, 4 Ad. & Ell. 466.

contract for making or building anything, not existing in specie at the time of the contract, no property vests in the party proposing to purchase until the thing is finished and delivered, or at least ready for delivery, and approved by the purchaser. When anything remains to be done after the delivery, the rule is thus stated by Mr. Selwyn,<sup>b</sup> in treating of the action of trover, which is founded on a perfect and complete right of property:—"When goods are sold, if anything remains to be done on the part of the seller, as between him and the buyer, to ascertain the price, quantity, or individuality of the goods, before the commodity purchased is to be delivered, a complete present right of property does not attach in the buyer, and consequently trover is not maintainable."

The authorities on this point were again reviewed by the Court of Common Pleas, in a case of *Wilkins v. Bromhead and Hutton*, which has been lately reported.<sup>c</sup>

The action was brought in trover against the assignees of Smith and Bryant, bankrupts, who were carpenters in Bristol, to recover the value of a greenhouse. It appeared that the bankrupts agreed with the plaintiff, who resided at Cardiff, to make him a greenhouse for 50*l.*, and to put it up for a further sum of 14 guineas. When the work was completed, but not permanently fixed together, the bankrupts informed the plaintiff, by letter, that the greenhouse was ready for delivery, and requested him to remit 50*l.*, which he accordingly did, and at the same time requested the bankrupts, by letter, "to keep the greenhouse and take care of it till he sent for it." The bankrupts, under the apprehension of an execution coming in on the premises, without the knowledge of the plaintiff, sent the greenhouse to the premises of a person named Wait, telling him it was the plaintiff's property, and requesting him to keep it until the plaintiff sent for it. Before the greenhouse was sent for, however, a fiat in bankruptcy issued against Smith and Bryant, and the greenhouse having been sent back to their premises by Wait, was taken possession of by the messenger under the fiat. There was a subsequent demand by the plaintiff, and a refusal. The jury having returned a verdict for the plaintiff for 50*l.*, the case came before the court upon a rule to show cause why a nonsuit should not be entered.

The arguments on behalf of the defendants were mainly grounded upon the doctrines laid down by the judges in *Mucklow v. Mangles*,<sup>d</sup>

<sup>b</sup> Selwyn's N. P. 1300, citing 12 East, 614, *Whitehouse v. Frost*, and many later cases.

<sup>c</sup> 6 Man. & Gr. 963.

<sup>d</sup> 1 Taunt. 318; and see the judgment of Erskine, J., in *Wilkins v. Bromhead*, 6 M. & G. p. 975.

and *Atkinson v. Bell*.<sup>e</sup> In the first of those cases, the rule deducible from the judgment of the court is, that whilst an article remains unfinished, no property in it passes, notwithstanding the vendor may intend it for the purchaser, or may put his name upon it, or otherwise show an intention to appropriate it, and this even where the buyer pays the whole value in advance. Sir J. Mansfield in that case observed, that the only effect of the payment was, that the bankrupt was under a contract to finish the article, which was quite a different thing from a contract of sale; and Heath, J., said:—"A tradesman often finishes goods which he is making in pursuance of an order given by one person, and sells them to another. If the first customer has other goods made for him within the stipulated time, he has no right to complain. He could not bring trover against the purchaser for the goods so sold. If the thing be in existence at the time of the order, the property of it passes by the contract; but not so where the subject is to be made." In *Atkinson v. Bell*, which has always been considered a leading case on this subject, the rule laid down is, that to support an action for goods bargained and sold, there must be either an actual sale of goods existing at the time of the contract, or a specific appropriation by the seller of goods, afterwards assented to by the buyer. In that case, Bayley, J., said:—"Where goods are ordered to be made, whilst they are in progress the materials belong to the maker. The property does not vest in the party who gives the order until the thing ordered is completed; and although while the goods are in progress the maker may intend them for the person ordering, still he may afterwards deliver them to another, and thereby vest the property in that other. Although the maker may thereby render himself liable to an action for so doing, still a good title is given to the party to whom they are delivered." Applying these principles to the case under consideration, it was argued, that although the bankrupts undoubtedly intended to appropriate the greenhouse to the plaintiff, his assent to such appropriation was wanting, inasmuch as he had not seen the greenhouse, nor by any act accepted it so as to preclude himself from repudiating it when he saw it. Had the bankrupts sold the identical greenhouse after the remittance of the 50*l.*, it was asked, could the plaintiff maintain trover for it? or, had it been destroyed by fire whilst on the bankrupts' premises, on whom should the loss fall?

These arguments, however, though put with great force and perseverance by Sir Thomas Wilde and the late Mr. Serjeant Bompas, failed to satisfy the court. "The question," Tindal, C. J., said, "turned not upon the original contract, but upon the subsequent circumstances; viz., the payment by the plaintiff, after the greenhouse had been completed, of the stipulated price; the appropriation and setting

<sup>e</sup> 8 Barn. & C. 277; 2 Man. & Ry. 292, S. C.

apart by the bankrupts of the greenhouse for the plaintiff; and his assent to such appropriation." "It may be," said the learned Chief Justice, "that the original contract did not pass the property, but the parties may be said to have entered into a new contract; and I cannot conceive why, under the circumstances of the case, the property in an article made to order should not pass upon its completion, as it would have done if it had been in existence at the time of the original contract." The court thought all the cases cited on behalf of the defendants distinguishable from the principal case, and observed, that *Atkinson v. Bell*, which was chiefly relied on, did not apply, as the question there turned upon the absence of assent, on the part of the purchaser, to the appropriation on the part of the vendor, whilst the facts in *Wilkins v. Bromhead* furnished complete evidence of assent on the part of the plaintiff to the appropriation made by the vendors. And Manie, J., in delivering his judgment, observes:—"It is not necessary in these cases that the vendee should actually see the article when completed, provided that there is sufficient to show that the identical thing offered or appropriated by the one party is accepted and assented to by the other, as made in the performance of the contract." Upon these considerations, the rule for entering a nonsuit was discharged.<sup>1</sup>

The determination of the court in *Wilkins v. Bromhead* cannot be said to be inconsistent with the decisions in any of the preceding cases, but it furnishes a favourable exposition of established principles, and defines the limit of their application, with clearness and precision.

## THE BARON DE BODE'S CASE.

### PETITION OF RIGHT.

This case came finally before the Court of Queen's Bench on the 11th Dec., 1845. The facts, which are very remarkable, as stated in the petition, were as follow:

The Baron de Bode is the son of the late Baron, who was born in the principality of Fulda, now part of the electorate of Hesse, and was a colonel in the service of the King of France. The late Baron married Mary, the daughter of Mr. Thomas Kynnersley, of Loxley-park, Stafford, and the present Baron, the issue of that marriage, was born at Loxley in 1777, and baptized at Uttoxeter in the following month. In the year 1839 the Baron presented to her Majesty a petition of right,

stating that at the breaking out of the first French revolution he was in possession of an ancient lordship called Soultz-sous-Forêt, in Lower Alsace, now forming the department of the Lower Rhine, in the kingdom of France. That the lordship was an ancient fief descendible only in the direct male line, not liable to be alienated or encumbered, and was held immediately of the empire. That the lord of the fief had in many particulars an exclusive and quasi Royal jurisdiction; that at the peace of Westphalia the Emperor ceded to the King of France his rights over Alsace, with a reservation of the existing privileges of the nobility of that province, who, after the treaty of Munster, continued to be immediately dependent upon the empire, and to furnish their contingents to the Emperor as before; and that the provisions of the treaty of Munster in this respect were subsequently ratified in 1679, 1680, 1688, 1689, 1697, 1713, and finally at the treaty of Aix-la-Chapelle, in 1748.

That in 1791 the late Baron de Bode, being alarmed at the progress of revolutionary principles in France, made a public cession of the lordship of Soultz to the present Baron, according to the principles and ceremonies of a feudal cession and investiture; that in 1793 both father and son were obliged to quit their lordship and take refuge in the Austrian army, which was then in the neighbourhood; that on the 10th of October in that year the authorities of the department of the Lower Rhine published a list of emigrants whose properties they confiscated, and that "Bode de Soultz," who was an English subject, was included in the number; that in pursuance of this decree, the mansion, houses, woods, mines, and other property of the lordship, were seized to the use of the then existing Government of France; that part of it was afterwards sold, and the residue remained in the possession of the French Government till after the restoration of the Bourbons in 1814 and 1815.

That by the definitive treaty of peace concluded between France and Great Britain in 1814, it was stipulated that certain commissioners should undertake to examine the claims of his Britannic Majesty's subjects upon the French Government for the value of property "unduly confiscated" by the French authorities, and that subsequent arrangements were made for more completely effectuating that object; that a sum of capital stock producing an interest of 3,500,000*fr.* was inscribed in the great book of the public debt of France as a guarantee fund for such claimants, who were to prefer their claims within the time and in the manner provided by the convention. That in December, 1815, certain persons were appointed commissioners of liquidation, arbitration, and deposit, and that within the proper time the Baron de Bode, being then in the Russian service, transmitted his claim through the Russian Ambassador at Paris, Count Pozzo di Borgo, who transmitted the same to the Duke de Richelieu, being the Prime Minister of France, to be by him transmitted to the

<sup>1</sup> The learned reporter of this case states, in a note, (p. 979,) that the defendant Bromhead afterwards brought an action against his attorney, Hall, for defending the action, and that the case was tried before Erle, J., at Bristol, 1845, when the plaintiff obtained a verdict.

mixed commission, which had not yet begun to sit; but that the Duke de Richelieu refused to lay the document before the commission as a British claim, upon the ground that the Baron's father was a German. That the British Ambassador, however, and other great authorities, considered the Duke de Richelieu to have formed an erroneous view on the subject. The petition then detailed the steps taken by the Baron for the enforcement of his claim until it was finally rejected by the commissioners, upon several grounds, in 1822.

He then preferred an appeal to the Privy Council, which was heard in June, 1823, before Lord Stowell, who confirmed the award of the commissioners, upon the ground that the "cession" above mentioned was not a *bona fide* transaction, or valid according to the principles of the civil law which were applicable to the case; and that the cession, therefore, passed no property in the fief to the present Baron de Bode, who was, therefore, not the owner of the estate at the period of the confiscation. A subsequent petition for a rehearing before the Council was refused for want of jurisdiction. The petition of right proceeded to state, that after liquidating all the claims of British subjects upon the fund already mentioned, there had been paid over to the Treasury of this country a large surplus, which was available for the petitioner's claim, and which he prayed might be applied for that purpose.

Upon this petition of right the Lord Chancellor issued a commission of inquiry, directed to certain members of the bar, who, having summoned a jury to their assistance, heard evidence upon the subject-matter for four days in succession, after which they returned the inquisition into the Court of Chancery, finding for the petitioner in substance upon every part of his case. At this point in the series of the proceedings, the Crown, for the first time, intervened by the Attorney-General, who, in answer to the petition and inquisition, pleaded, first, that none of the allegations contained in either of those documents was true; secondly, that the causes of petition had not accrued within six years before the petition was presented; and thirdly, that the same causes had not accrued since the accession of the present Queen. Upon these pleas issues were joined, and the case upon this traverse of the petition and inquisition came on to be tried at bar in this court upon the 20th of June in the last year, and continued to the 24th of the same month, when the jury found a verdict for the plaintiff, declaring him entitled upon the score of his claim to receive 364,266*l.*, with interest from the 1st of January, 1819. They also found specially that the cession of the lordship to the present Baron by his father in 1791 occurred as a matter of fact, and that the evidence of the foreign advocates who had been called as witnesses upon the trial proved the cession to be valid according to the law which was applicable to the case. The jury as to the second and third issues found, of course, that the causes of petition did not arise within six

years before the presenting of it, or since the accession of her present Majesty to the throne.

In Michaelmas Term, 1844, Mr. *M. D. Hill* (with whom was Mr. Serjeant *Manning*, Mr. *Mellor*, Mr. *G. A. Young*, and Mr. *Austey*) applied to the court for a rule calling upon the Crown to show cause why judgment should not be entered for the Baron de Bode upon the verdict, notwithstanding the finding for the Crown upon the two issues upon the subject of the limitation of the statute and the accession of the Queen.

The *Solicitor-General*, then Sir *F. Thesiger*, (with whom were Mr. *Kelly* and Mr. *Waddington*) at the same time applied for a cross rule to have the judgment entered for the Crown upon several grounds, of which the principal were, that according to the evidence it appeared that this Baron de Bode was not a British subject at all; that, even if he were such, a petition of right was not available to obtain redress for any injury, except one done by the Sovereign's unjustly taking possession of the lands or specific chattels of a subject; and that it was, finally, impossible by such a proceeding to procure the restoration of a fund which had been actually distributed according to the express provisions of an act of parliament, and which had never been received into the personal possession or for the personal benefit of the Queen.

Both rules were granted and argued, and the court took time to consider its judgment, which was now delivered by

Lord *Denman*. The general proposition maintained upon the part of the suppliant in the case was, that according to the convention which had been concluded between England and France, and the subsequent proceedings which took place upon the same subject, the money out of which the suppliant claimed compensation had been virtually received by the British Government in trust for his use, and that he was as completely entitled to receive compensation out of it as if his name had been actually inserted in the original convention. The statement of fact from which he deduced this conclusion was encountered in every part of it by the representatives of the Crown. But it was further insisted, in opposition to the claim, that supposing all the circumstances alleged by the suppliant to be established by the proof, he still was disentitled to obtain the relief which he sought in the form in which it was prayed; inasmuch as a petition of right was only applicable to the case where the sovereign had seized upon the lands or specific chattels of the subject, and could not be rendered available for the recovery of damages, or of a debt due by the sovereign to a subject. It was, perhaps, to be regretted that this latter objection had not been taken at an earlier stage of the proceedings, inasmuch as the Lord Chancellor, if he was of opinion that the peculiar course which had been adopted for obtaining redress was legally insufficient for the attainment of its object, might have at the outset made a decision to that effect, and so prevented the neces-

sity for all the expenditure of money and time, and all the anxiety which had been the consequence of the course that had been pursued. Considering, however, the lapse of time which had occurred since any similar proceeding had occurred in our tribunals, the imperfection of the authorities on the subject, and the complication of the numerous ingredients which composed so extensive a case, it was, perhaps, natural that the law officers of the Crown should require that the facts themselves should be established in a satisfactory manner, without surrendering the objection which was founded upon a want of jurisdiction.

The question, however, which the court was now called on to decide was, how far, supposing all the allegations of facts to be sufficiently established by the evidence, the suppliant was entitled to the judgment of the court in support of the relief which he prayed, and in the form in which it was required. With regard to the form of the proceeding, it was clear that there was nothing to secure the Crown against committing a wrong against the subject in respect to money or other chattels as well as in respect to land, and the court, upon principle, felt a strong repugnance against any suggestion which would have the effect of closing the door against all redress for such a wrong. The reference of such a petition to the law officers of the Crown, with a direction "that right be done," would seem to justify the court in deciding in favour of the existence of such a remedy in such a case, and in determining that if an infraction of a right had taken place, reparation ought to follow in this case as in others. Indeed, the dignity of the Crown itself seemed to require that when clear evidence had been given to show that the subject had suffered a wrong at the hands of the Crown, the direction of the Sovereign upon the petition of right ought to be carried into effect; and that "right should be done" to the subject who had suffered the wrong. For these reasons, without giving any decision upon the question itself, the court had proceeded to consider how far the circumstances of the case were sufficient to entitle the suppliant to the remedy which he prayed for, supposing that his right to such form of redress was established by law.

Here his lordship stated the nature of the claim of the Baron de Bode, and the circumstances upon which it was founded, and then proceeded to state, that there was scarcely one of the propositions which constituted an ingredient in the claim of the Baron de Bode which had not been encountered by formidable objections, which it was now the duty of the court to examine; and in the course of this examination there were two propositions from which the court was to commence the investigation; first, that the burden of proof was in every instance imposed upon the Baron de Bode; and, secondly, that the verdict of the jury must be taken to be conclusive upon the facts which it found. That verdict affirmed the *ex parte* finding of the preceding jury which had been empannelled under the commission

which had been issued by the Lord Chancellor, and was therefore a confirmation of the allegations of the inquisition, but did not affirm the allegations of the petition, which, as well as those of the inquisition, were traversed by the pleas which had been put in upon the part of the Crown. The question in such circumstances was, whether the inquisition set forth a sufficient title in the Baron to the relief which he prayed, and the first step which it was necessary for him to take in the proof was to establish his right to the character of a British subject. That right the court would assume to be satisfactorily proved, and the next question which arose was, whether he had brought himself within the operation of the treaty of commerce agreed to between France and England in 1786. The following was an extract from the treaty:—"And for the future security of commerce and friendship between the subjects of their said Majesties, it is concluded and agreed, that if at any time there should arise any misunderstandings between the Crowns, the subjects of each residing in the dominions of the other shall have the privilege of remaining therein without any manner of disturbance as long as they behave peaceably and commit no offence against the laws; and in case their conduct shall become suspected, twelve months shall be allowed them to remove with their effects and property. At the same time it is understood that this provision is not to be extended to those who shall act contrary to the established laws." His lordship then proceeded to read from the treaties of 1814 and 1815 the provisions above stated for satisfying the claims of the subjects of his Britannic Majesty upon the Government of France, in respect of such portion of their property as had been *indument confisqué* by the Revolutionary Government of the latter country.

Upon this subject his lordship observed, that the allegations of the petition of right were entirely insufficient, as they did not state the petitioner had complied with all the conditions which were necessary to his being entitled to indemnity, or that he had placed himself in such a situation as he was required by the principles and regulations of the treaties and conventions to occupy before he could insist upon the award of compensation in his favour. Instead of alleging that the property of the suppliant had been unduly confiscated, he only stated certain facts from which he left that conclusion to be drawn by the court. The conduct of the suppliant which led to the confiscation by the French authorities was by the suppliant called "emigration." But this court could not take judicial cognizance of the meaning of that expression, or say that the confiscation of property of a British subject upon the ground of emigration must of necessity be in all cases an instance of undue confiscation. To hold this doctrine in the present case would seem to involve the proposition that mere birth was sufficient to create the character of a British subject, to render him incapable of being affected by the principle of local allegiance. Unless this doctrine could

made out, then the confiscation upon emigration could not be presumed to be "undue," or its enforcement by the French tribunals to be unjust. If, in fact, the conduct of the suppliant was not sufficient to justify the confiscation, that ought to be shown to this court, which could not sit in error upon the judgment of the French tribunals for the purpose of inquiring whether the decisions of those tribunals were erroneous or not, according to the laws which were administered by themselves. That was a sort of investigation for which this court was entirely unqualified, and which they could not undertake. If the case were otherwise they might be called upon to award compensation to any British subject who might have been mulcted in a pecuniary fine by a French tribunal for an offence against the laws of that country, if he could subsequently succeed in persuading a Middlesex jury that the decision of the French court was incorrect. This court, therefore, could not in any case assume that the decision of the foreign tribunal was wrong, whilst in the present case there existed a fact which appeared upon the inquisition itself, and which seemed to prove that the French tribunal was right. That fact was, that the suppliant and his father both quitted France and went within the lines of the Austrian army when it was actually engaged in the invasion of France, and was locally situate within the territory of that country.

But, supposing all those difficulties to be overcome, and that the suppliant was really included within the terms of the treaty, still he was only entitled to the indemnity upon his complying with all the conditions and limitations which had been established with respect to the resignation of the claim, and the proof which was required as to all the facts which were considered necessary to the establishment of the right. It not only did not appear that the suppliant had complied with those conditions, but it appeared very distinctly that he had not. It was apparent, upon the statement of the party himself, that his claim had not been originally registered within the proper period; that this original defect was not cured by any subsequent admission of his name among the claimants to whom further indulgence had been granted; and that the amount of his claim had, in fact, never been ascertained in the manner which was required by the treaties and the statutes upon the subject. He was, therefore, not within the operation of the clause in the act which provided that claimants duly registered should receive compensation when the extent of their loss had been ascertained, and he, in fact, had shaped his own case in a different manner.

His lordship then repeated the allegations connected with the proceedings of the commissioners of liquidation, including the award by the commissioners of compensation to other individuals than those whose names appeared upon the original register, and the final payment of the ultimate balance into the Bank of England to the credit of the Lords of the Treasury.

His lordship went on to add, that the court did not see how it was possible to extract out of these facts any claim, either legal or equitable, in favour of the suppliant. The amount of his claim had not been ascertained, nor the claim itself admitted, nor did it appear that the Lords of the Treasury had authorised the commissioners to grant any compensation to persons not lawfully entitled to receive it. It was possible that the suppliant might have had reason to expect that the inquiry would not have been closed without giving him an opportunity of bringing forward his claim. But it did not appear that he had not preferred a request of that kind, or that it had not been refused upon grounds which appeared sufficient to the parties by whom they were taken into consideration, or that they had not refused compensation upon the ground that the suppliant was disentitled to it, or that other claimants upon a fund which was inadequate for the satisfaction of all the demands upon it, were not entitled to be preferred to the suppliant. He had called upon the court to conclude that there were no other claimants in fact, but the court knew nothing upon that subject, and the claim of the baron himself rather tended to produce a contrary presumption. In such circumstances it was impossible to assume that he alone could be entitled to the balance remaining in the hands of the Lords of the Treasury, and the more especially when there was not in existence any account in which the sum in question or any other whatever stood to the credit of the baron.

His lordship then proceeded to advert to the award made by the commissioners against the claim in 1822, and the confirmation of that award by the Privy Council in 1823. This award his lordship stated, was not, properly speaking, before the court, as it was not included in the inquisition to which their inquiry was confined. It was, however, impossible not to advert to it, as it in truth suggested an important dilemma; for, if the claim had been duly investigated by the commissioners and properly rejected, he had no ground for presenting a petition of right; if, on the other hand, his claim had not been inquired into, he could have no title to receive the money, which, according to the effect of the treaties and the statutes, was only payable after an investigation by the parties who were authorised by the statutes and conventions to conduct the inquiry.

The only other consideration to which the court thought it necessary to advert was, whether there appeared any ground for supposing that the money which was now alleged to have been paid into the bank as the unappropriated balance of the indemnity fund had been paid over to her Majesty, or to any of her servants for her personal use. Upon this point his lordship adverted to an inference which had been drawn from an expression of Mr. Justice Coleridge, upon the occasion of refusing an application made by Mr. M. D. Hill for a *warrant* to the Lords of the Treasury, commanding them to pay over the balance in their hands

to the suppliant. From that expression it had been erroneously inferred that a possession by the Lords of the Treasury was a possession for the personal use of the Sovereign, and as the principle of a petition of right was, that some personal benefit had accrued to the Crown from the possession of the matter which was the subject of the petition, it was further concluded that such petition would be the appropriate remedy in the present case. This court, however, was unanimously of opinion that the sum which was the subject of the present inquiry was not received personally by the sovereign, and that any argument founded upon the contrary supposition was inapplicable and invalid.

For these reasons the judgment upon the verdict was ordered to be entered for the Crown.

### LEGAL POETS.

OUR readers are not in general of that class of persons who, like a certain king's counsel, in the time of George the 3rd, rejoiced in abstaining from the study of all except law books, and chose for his motto, "Causes produce effects." We may, therefore, at this season, venture upon a short notice of a poetical work by a learned member of the profession, who formerly practised as a solicitor, and is now at the bar. The general opinion, doubtless, is, that the sound lawyer and the inspired poet cannot co-exist in the same individual, and saving some very rare exceptions, we are inclined to subscribe to this proposition. Nevertheless, it should be remembered, that amongst the vast multitude of which the profession is composed,—taken from various classes of society and undergoing various modes of intellectual cultivation,—there may be many who possess poetical genius, however restrained and subdued by the severities of legal study.

The work to which we wish to attract the attention of our readers, is the "Spirit of the Vatican," by Mr. Turnley, of the Middle Temple.

In further vindication of our devoting at this season a page or two to a professional poet, and on a subject concerning the church, it may be observed, that during the middle ages our laws were generally administered by the dignitaries of the church, and, indeed, there can be no very early research into our legal annals without encountering a considerable portion of ecclesiastical matters.

One of the chief objects of the author appears to be, to show the action of ecclesiastical power when in contention with monarchy, and for

this end he has chosen the eventful scenes of the latter part of the 12th century; and we think he has selected a favourable form of literature for the illustration of his characters, who were some of the most distinguished that ever appeared in the political arena of England. In a very forcible and elegant manner, the author describes the consequences of the refusal of the primate, ex-chancellor A'Beckett, to sign the constitution of Clarendon, and depicts the anger of the king and the jealousy of the people in graphic and glowing terms. One of the chief advisers of the king was the renowned *Glanville*, who recommended the division of the labours of the justices into the present form of circuits.

Mr. Turnley is an enthusiastic admirer of Henry the 2nd, as the following extract will show:—

"On Henry's return to England, he ascended the throne with a firm step; and all men saw that his resolution was to punish the wicked, and protect the weak, and rule all with that strong nerve with which nature had gifted him. He was hailed by the English as the descendant of their ancient Saxon line. Immediately upon the coronation, the new bride was conducted to the king's palace at Bermondsey, which was then a pastoral village, although partaking of the Flemish character. These were highly cultivated lands, with their smooth and velvet meads, bounded by the fast flowing Thames. At that time the old temple was ornamented with its beautiful garden, and the banks of the river were studded with the dwellings of the nobility. \* \* \* It might be said of him, that when he knew he required sleep, he only took that rest which restored his body to its perfect powers; but he never slumbered, or folded his arms. Every thing that sustained the comfort of his people, or the honour of royalty, was now under his own eye; indeed, the good order of cities, the improvement of agriculture, manufactures, and trade, occupied a just portion of the mind of this mighty and chivalrous being. \* \* \* He was an ardent and faithful student. Peter of Blois records that his companions were men of erudition and science, and when with them he proved that his knowledge must have been gained by long and patient study. For, unlike most princes and grandees of this world's theatre, he cultivated his mind, not for show, or mere protection from the insolence of the ignorant, but as a friend in severe trials, or hours of ease; and when the glory of fortune casts its beams on him, it was reflected with increased lustre by the object it glowed upon."

The Appendix, from which we have made these extracts, contains much historical information, and many documents which cannot fail to interest the antiquarian.

We enter not into the controversies of the church, yet we think the author has selected a subject which may find many patrons in the present agitated state of the theological world.

There are eccentricities displayed in some of the thoughts and expressions, and a fervour of

\* The Spirit of the Vatican, illustrated by Historical and Dramatic Sketches during the reign of Henry the 2nd, with an Appendix of Papal Bulls, Doctrines, Episcopal Letters, &c. By Joseph Turnley. London: Cunningham, 1845. Pp. 247.



religious enthusiasm which, in many instances, carry away the author from those just and charitable conclusions which generally distinguish him.

We shall best discharge our duty by quoting a small portion of each part of the author's composition, both in prose and verse. He thus condemns the church for withholding the scriptures from the laity :—

"This was an unfaithfulness and a repudiation of her divinity. It was human weakness, glaring on the brow of the spiritual vocation, fearing that her mystic knowledge and superstitious influence would be exposed and attenuated! it was man intercepting the light of Heaven from the countenances of his fellow-men! it was man opposing his Maker in the course of his wide developments and purposes! it was pride united to meanness! it was form and earth opposing Spirit and Heaven! She denied the liberty of human thought, and dared to urge that angel of light, the spirit, by force and cruelty! Faith was urged by fear, and made a thing of time and place; whilst demonstrations of the power of man were exhibited—such as fire, the sword, and the inquisition—to purify heresies, (so called)."

The overthrow of Henry 2nd is thus reflected on :—

"The terms, however, of a peace which he had entered into were so humiliating and disadvantageous, that his spirit soon lost all its fervour and action; and suddenly that bright light sunk within its earthen tabernacle, never to rise again, in the 57th year of his age. Henry II. as a conqueror, surrounded by the brave and triumphant, was a dazzling spectacle; but when the storm of life set in, and with pelting violence followed him everywhere, his hardy frame at length yielded and sank. The shock must have been tremendous, to a spirit wholly unschooled to humiliation. Alas! what can describe the intense agony that quivered through the mortal frame tenanted by this undaunted spirit, when the dream of his invincibility was broken, and the tide of his victories rolled back, with the shock of his destruction echoing through all Europe! That immeasurable weight of horror, which then entered his spirit, could find no place on earth to bear it up; but heaving headlong in his mortal parts, urged them down even to the relentless grave."

The death scene of Henry (who dies in the arms of Geoffrey his illegitimate son) is described in the drama, and we give the following portion of it :—

"I know death's passage, and have often seen  
Its consummation, when on Summer's eve  
The battle-field I've paced, and viewed around  
Its trophies breathing their last piteous sigh.  
This world is but a prison  
Of niggard bounds;—but the chill land of Death  
Has regions vast and limitless; and thus  
It is that spirits take a grade, a step  
Towards the ethereal, eternal life."

To die, would be severe calamity,  
But that I know Death's arm clanks like my own.  
Death is a vassal, and his ghastly train  
He leads but to the confines of a land  
He may not, cannot enter. Yes! 'tis there  
The important change is made; there mortals shift,  
And awful immortality put on.  
Yet ye may riddles in that state resolve :  
Perhaps a sleep of countless years must pass :  
Perhaps the mortal parts there undergo  
Transitions mystic and arrangements dread!

My son! the best belov'd of all. Geoffrey,  
Give me thy hand. There in thy honest palm  
I place this envied ring. Precious it was :  
It sparkles now as bright as it was wont  
In court and tournament—thou faithful gem!  
There, Geoffrey, take the gem—wear it for one  
Who loved thee much, and now must leave.

Geoffrey—  
I may not stay to tell thee all I would—  
Upon thy filial arm I'll muse the rest,  
As on a summer's eve the lazy serf  
Sinks into wholesome rest."

## NOTICES OF NEW BOOKS.

*The Practical Man; or, Legal and General Pocket Companion: furnishing Precedents, Rules, Tables, Calculations, &c., in those Matters of Professional and General Business requiring attention when Reference cannot be had to the Library. Fifth and Enlarged Edition.* By ROLLA ROUSE, of the Middle Temple, Esq., Barrister-at-Law. London: Spettigue: 1845.

THE preface to the fifth edition of this book will explain the improvement and additions which have been made since the fourth edition was published. We can conscientiously recommend the work as one of the most useful in a solicitor's office.

"I have, (says the author) in each succeeding edition of this work, made such additions and improvements as experience induced me to think might reader it more useful.

"In the present edition I have added nearly seventy pages, the greater part of the additions requiring much time and care in the preparation.

"The following additions and improvements have been made in Part I., containing forms, more strictly applicable to the professional duties of a solicitor.

"The forms of *Purchase Contracts* on the transfer of real property have been carefully redrawn and increased in No. from 7 to 20, so as to render them more comprehensive, and generally useful in practice. The explanatory remarks and suggestions have also been materially extended.

"In place of the *Outline Debtor and Creditor Deeds*, in the last edition, I have given the forms at full length, both as to personal property, and real and personal property, comprising freeholds, copyholds, and leaseholds.

"The head *Registration of Voters* has been redrawn to accord with the provisions of the late Registration Act, and has been materially enlarged.

"Considerable additions have also been made in *Stamps*; and the forms applicable to the preparation of *Wills* are now, (exclusive of eleven *Outline Wills*.) eighty-four in number.

"Several forms of *Powers of Attorney*, including one from a person going abroad, have also been inserted; and other additions and improvements have been made throughout this part of the work, as will be seen by reference to the table of Contents.

"In Part II., several additions have been also made, in order to render that part more generally useful.

"Part III., although drawn with great care for the last edition, has been materially improved, by the extension of the government 4 per cent. Values to all ages, and the addition of a table at 5 per cent., (No. 45, b,) which I have prepared agreeably with the Law of Mortality on which Mr. Finlaison's Government Values are calculated.

"The great difference between the values of male and female Lives so clearly marked in Mr. Finlaison's report, has induced me to also prepare a Table of the Probabilities of Life, on the same basis, in order that in questions relative to deferred Annuities and other like computations, the Government values may be adopted. See Table 54 (a).

"I have also prepared and added a table of the Value of two Joint Lives of equal ages, of five years' difference, and twenty-five years' difference (46 a); the first and second class of Values applicable to Lives of Husband and Wife, and the third, to those of Father and Son, such being the Lives respecting which joint values are frequently required.

"I much regret that, from the great length of time required for the preparation of such tables, and the great number required, I have not been able to insert a complete set of such tables in this work. I hope, however, that I may be able to prepare them for publication in a separate form, as such tables would be of great public use, and I believe there is no probability of their being published by Mr. Finlaison.

"To show, however, that the preparation of tables of the Values of two Joint Lives varied according to the sexes, is not a very light task, I would remark that such variation renders three tables necessary in the case of equal lives, and four tables where ages differ, and that consequently it would require thirty-one tables to give the values according to the difference of Ages in *Desparcieux* tables, No. 46 (b), &c., and even with the aid of loga-

rithms there would be nearly 100,000 figures required to compute the tables at any given rate of interest.

"For the information of those who may wish to prepare any particular table, I am induced to add the following instructions as to the mode of doing so. For the value of the eldest lives in the table, being ninety-nine as to females and ninety-seven as to males, multiply together the present value of 1*l.*, to be received at the end of a year, according to the named interest, and each of the Probabilities of the Lives continuing to the end of a year. For the next eldest Lives, multiply together such present value, each of the probabilities of such Lives, continuing to the end of a year, and the previously ascertained value of the greater Ages added to unity, and proceed in the same way up to the youngest Lives in the table, adding unity to each value previously found in computing the values of the next Lives.

"Of course, in all such computations logarithms will be used, as any other mode of commutation would be found too tedious for practice.

"Having thus observed upon the alterations made in the present edition, it may not be improper to state that the work in its present form contains in Part I., forms and information relative to *Acknowledgments, Affidavits, Agreements, Arbitrations, Bail, Bankruptcy, Bills of Sale, Bonds, Cognovits, Conditions of Sale, Debtor and Creditor Deeds, Distresses and Replevins, Distribution of Intestates' Estates, Guarantees, Inheritance to Real Estates, Notes of Hand, Notices, (forty-four forms,) Partitions, Partnerships, Powers of Attorney, Releases, Registration of Voters, Riot, Damages, Tithe Computation, Undertakings, Warrants of Attorney, Warranty of a Horse, Wills, (nearly one hundred forms,) and Stamps*. The titles printed in italics have received material additions.

"Part II. gives rules and tables applicable to Measurements and Computations useful to all who have to manage, or are interested in property; and Part III. contains an extensive and carefully prepared set of rules and examples, enabling any person to compute all the values relating to Lives, Annuities, Deferred Payments, Reversions, Church Property, &c., and generally to solve all questions connected with the value of property, other than absolute ownerships and perpetuities.

"The whole of the work will be found useful to solicitors, whose attention is not confined to strictly legal matters, but who require to understand the management of property and the value of limited interests in it; and I believe the greater part of the work will be also found useful to all who are the owners, or are engaged in the management, or valuation, of property."

## RISE AND PROGRESS OF THE LAWS OF ENGLAND.

OUR readers, one and all, without a single exception, have doubtless read Blackstone's admirable summary of the rise, progress, and gradual improvement of the Laws of England.\* We may during the recess venture to indulge ourselves in stating Mr. Gilbert à Beckett's version of the subject, as it appears in his "Comic Blackstone,"—a volume abounding with wit and humour of the best kind. It is marvellous, also, that amidst the facetiousness which every where pervades the work, there are frequent displays of many nice and subtle legal distinctions, which none but a well-read and acute lawyer could render subservient to his purpose. We may advert to these at a future time, and for the present offer the following extract:—

"We now propose to take a survey of the whole juridical history of England; and holdly grasping the constitutional theodolite, we proceed to take the levels, mark out the gradients, and observe the cuttings along the whole line of British Law. The periods and intermediate stations through which we intend to pass are six:—1. From the earliest times to the Norman Conquest, a short and not a very easy stage. 2. From the Norman Conquest to the reign of King Edward I., which will be very up-hill work. 3. From thence to the Reformation, in which we shall observe that the gradients were somewhat rapid. 4. From the Reformation to the Restoration of Charles II., where the cuttings were very severe. 5. From thence to the Revolution, in 1688, where the tunnelling must be heavy considering what was gone through. And 6. From the Revolution to the present time, where we arrive at the terminus of our work.

"1. And first let us look at the Ancient Britons, who, we are told, 'never committed their laws to writing, possibly for want of letters'—a reason that reminds us of the excuse of the angler who did not go out fishing because in the first place there were no fish. Though in our day we hear of French without a Master, the Druids were not such clever fellows as to be able to achieve writing without letters, or penmanship without an alphabet. Antiquarians tell us no trace of a letter is to be found among the British relics, and if they have been looking for some correspondence with the Druidical postmark, we are not surprised at the search for letters having proved vain.

\* Some of our readers think, that if the law reformers are not more careful than they have been lately, we shall have to add a new chapter to the history, under the head of "the decline and fall of the said laws."

"When we consider the number of different nations that broke in upon Britain, we must not wonder at the hodgepodge they made of our early laws; for what with the Romans thrashing the Britons, the Picts pitching into the Saxons, and the Normans drubbing the Danes, it is impossible to say who gave its early judicial system to England, though it is clear that they gave it to one another in magnificent style.

"The first attempt to model the constitution was by Alfred, who, having whacked his enemies, might be called a modeller in whacks, and who divided the whole country into hundreds, as we have since learned to divide our walnuts and our coals. He made himself the head reservoir of justice, and laid it on—sometimes rather too thick—to every part of the nation. He was the first literary monarch who ever sat upon the Saxon mile-stone, which was the substitute in those days for the British throne, and we hail him as a brother author; for he wrote the first law book that England ever saw. Among the Saxon laws we find the constitution of Parliaments, the election of magistrates, the descent of the crown, and other institutions preserved to the present day; and not only preserved but potted and garnered up in the bosom of the British Constitution, where we hope they will long remain.

"2. The Norman Conquest made considerable alteration, and introduced the forest laws, which threw the game into the king's hands, vesting every beast of the field or fowl of the air in the sovereign, as in one vast hamper, which hampered the people to the very last degree. William also introduced the trial by combat, for he wished the people to learn to lick each other, having taught them to lick the dust. During this period of our legal history, feudal tenures came into full growth, and they at last had the effect of irritating the barons in the reign of John to demand that splendid piece of parchment which every one puffs but nobody reads—as is sometimes the case with a well advertised book—that enormous palladium of our liberties, called Magna Charta. We shall not describe the contents of this glorious specimen of penmanship, for every Briton of course has it at his fingers' ends, and having learnt it at school, hangs it in his study at home, that he may remember that it regulates the time and place of holding a court leet among other privileges even still more precious than the one to which we allude.

"3. The third period commences with Edward the First, our English Justinian—a title that savours of quackery, like the Irish Paganini, the American Braham, and other foreign editions of distinguished men. Among other achievements, he first established a repository for the public records, which perhaps stood on the very ground now occupied by the horse repository in St. Martin's Lane.

"The laws went on improving until the time of Henry the Seventh, when that monarch and his ministers being hard up, resorted to every

method of making money, and only considered what was 'likely to pay.'

"4. Our fourth period brings us to Henry the Eighth, who introduced the bankrupt laws, and several other legal measures; having imbibed a taste for law studies while lodging at Honey and Skelton's, the hair dressers at the top of Inner Temple Lane—and it is said that the rival family came to be called the house of Tu-dor, because there are two doors to the house alluded to—a piece of antiquarian affectation and learned foppishness, in which we do not believe.

"The children of Henry the Eighth did little for the law; but Elizabeth extended the royal prerogative, which she seemed to consider as elastic as a piece of Indian rubber, and she used it to rub out many of the dearest privileges of the people.

"On the accession of James the First, he found the sceptre too heavy for his hand, a discovery that was subsequently made by James the Second, who very prudently dropped it, when he could no longer manage it, instead of holding on like Charles the First, who was little better than half a sovereign, and ultimately paid the forfeit of a crown.

"5. The fifth period brings us to the Restoration, and this reminds us that the British constitution is a good deal like Smith and Baber's floor-cloth manufactory at Knightsbridge, which has been destroyed, restored, rebuilt, repaired, burnt down, and raised up at least half-a-dozen different times. The British constitution seems, like a cat, to have nine lives, for it has received within our recollection several death-blows; but, no matter from what height it is thrown down, it always comes upon its feet again. It was in the period after the Restoration, that the *Habeas Corpus* Act was passed, which is said to be a second *Magna Charta*, and must therefore be a good deal like butter upon bacon, for if *Magna Charta* was a bulwark and a palladium, we did not require another bulwark and another palladium before the first had been regularly worn out.

"6. From the revolution to the present time is the sixth and last division of our subject, and we are happy to say that this period has been fertile of really useful reforms. These amendments have been noticed in other portions of this work, and it is needless to recapitulate them here.

"Thus have we traced our rude plans and maps of our laws and liberties. We have endeavoured to evince a proper admiration for the great monument of law, which, in the capacity of showman, we have sought to exhibit in such a way as to render it attractive to the public at large. We have attempted to do for the law what Van Amburgh has done for the tiger, and it has been our effort to show that the law is not such a formidable monster, tearing to pieces every one that comes within its grasp, as is too generally supposed. We have been anxious to show that it may be approached playfully and without horror, until a familiarity is established between the student and the

law, as pleasant as the understanding between the brute-tamer and the brute. Let us hope we have shown that Blackstone, like another black individual, is not so dingy as he is painted."

## BARRISTERS CALLED.

*Michaelmas Term, 1845.*

### LINCOLN'S INN.—Nov. 20.

Rowland Jay Browne, Esq.  
E. William Robertson, Esq.  
Eustace Meredyth Martin, Esq.  
Edward Nugent Ayrton, Esq.  
Dugald Stuart, Esq.  
Alfred Bate Richards, Esq.  
Martin Ware, junr., Esq.  
Maurice H. Power, Esq.

Nov. 24.

John Hugh Burgess, Esq.  
Thomas Cooke Wright, Esq.  
Henry Cadman Jones, Esq.  
Henry Fort, Esq.  
James Francis Morgan, Esq.  
Melville Portal, Esq.  
Frederick John Vipan, Esq.  
John Matt. Ridley, Esq.

### MIDDLE TEMPLE.

Nov. 7.

Joseph Brown, Esq.  
Thomas Ewing Winslow, Esq.  
John Compton Gregson, Esq.  
George Milner Stephen, Esq.  
Francis Roxburgh, Esq.  
John Sidney Smith, Esq.  
Albany Wyrill Hoggins, Esq., LL.B.

Nov. 21.

Archibald Paull Burt, Esq.  
George White, Esq., B. A.  
Arthur Macdonald Ritchie, Esq., B. A.  
Henry Blair Mayne, Esq., M. A.  
Edward Ovens, Esq., B. A.  
Conway Whitehorne Lovesy, Esq., B. A.  
Edward Estlin Grundy, Esq.  
Daniel Bishopp Ryan, Esq., B. A.  
Thomas Tapping, Esq.  
John James Holford, Esq., B. A.  
Thomas Spencer Cope, Esq., LL. B.  
Joseph Ashton, Esq.  
Thomas Jones, Esq.  
Philip Francis, Esq.  
Godfrey Meynell, Esq., M. A.  
Edward Bourne Lovell, Esq.  
Thomas Hardwicke Cowie, Esq.  
Peter Leversage, Esq.  
Frederick Bailey, Esq.  
Henry John Sawyer, Esq., B. A.

### INNER TEMPLE.

Charles Winston, Esq.  
Edward Henry John Craufurd, Esq.

James Gordon Allan, Esq.  
 John Wood Haslehurst, Esq.  
 Edward James Hawker, Esq.  
 Camille Felix Desiré Caillard, Esq.  
 John Arthur, Esq.  
 William James Garnett, Esq.  
 The Hon. Edward Frederick Leveson Gower.  
 Thomas James Clark, Esq.  
 Rowley Young Lloyd, Esq.  
 Hugh Parnell, Jun., Esq.  
 Frederick Walford, Esq.

---

GRAY'S INN.—NOV. 19.

Joseph Burnie, Esq.  
 James Brownlow Hoskins, Esq.  
 John Shaw, Esq.

---

HOLIDAYS AT THE LAW & EQUITY OFFICES.

---

To the Editor of the Legal Observer.

MR. EDITOR,— Would you, or any of your readers, kindly inform an old subscriber by what authority this day (29th December) is kept as a holiday in the common law offices, and in the record and writ clerk's office in Chancery?

By turning to the Common Law Rules, lately published by the Law Society of the United Kingdom, I find, at p. 216, that by the act 3 & 4 W. 4, cap. 42, *no holidays are to be observed in the courts of common law, or in the several offices belonging thereto, except Sundays, the Nativity of our Lord and the three following days, and Monday and Tuesday in Easter Week; and that by the rule Hilary T. 6 Wm. 4, 1836, certain other holidays, and none other, are to be observed: but these latter holidays do not apply to Christmas. To me there does not appear to be anything to authorise the officers of the common law courts to shut up the offices to-day. It is not said that if the last of the three days which follow Christmas Day fall on a Sunday, the following day shall be observed as a holiday. And you will note, that by the language of the act no holidays whatever are to be observed except those therein mentioned, and that by the language of the rule above referred to, the holidays therein mentioned, and none other, are to be observed, in addition to those mentioned in the act.*

And by turning to the General Orders of the Court of Chancery of May 8, 1845, I find that the several offices of the court, except the offices of the Accountant-General, and of the Masters in Ordinary and Taxing Masters, *are to be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter Week, Christmas Day, and all days appointed to be observed as days of general fast and thanksgiving. Certain vacations are also to be observed; but it is evident (although the language of the 8th Order is ambiguous)*

that these vacations apply only to the offices of the Accountant-General, and of the Masters in Ordinary and Taxing Masters.

L. T.

[We incline to think that the three days following Christmas Day were intended to be exclusive of Sunday, namely, three days of business.—Ed.]

---

NOTES OF THE WEEK.

---

GRATUITIES TO BARRISTERS' CLERKS.

WE much regret to find that there is a serious dispute about the gratuities to counsel's clerks, in consequence of the order of court not having been adhered to. We have had an opportunity of seeing several old bills of costs, from which it appears that only 2s. 6d. was paid in many instances, and on other occasions nothing was paid: so that it appears to have been a mere gratuity at the solicitor's option, and until a comparatively recent period it was *never allowed on taxation*. The taxing officers at length, however, allowed 2s. 6d. and sometimes 5s., but no more. The claim increased from time to time, until in 1828, it assumed the form of a demand to the amount of 5 per cent. on the barristers' fee. The taxing officers refused to allow this per centage even when actually paid by the solicitor, and the common law courts made an express regulation in 1834, fixing the largest amount, as between party and party, at 10s.

This did not settle the dispute, for the clerks still claimed the 5 per cent. as payable by the client, though he could not recover it from his opponent. The Incorporated Law Society then memorialised the judges, and proposed a higher scale than the rule of 1834, applicable whether between party and party or *attorney and client*. Accordingly in 1836, the common law courts made a formal rule of court, the scale on the larger fees being about 2½ per cent. The judges in equity were then applied to, and in 1840 made a similar order. Neither of these orders, however, direct the payments to be made to the clerks; but, if paid, authorise their allowance.

It seems that it is the practice in some solicitors' offices to pay more than the fixed allowance, and this want of uniformity occasions disputes. On a recent occasion the clerk has taken the law into his own hands, and retained out of a bank note a larger amount than is set down in the order of court. The barrister being appealed to, refused to interfere, and the matter is now before the Master of the Rolls.

---

SOLICITOR OF THE DUCHY OF LANCASTER.

The vacancy occasioned by the lamented death of John Teesdale, Esq., has been filled up by the appointment of Thomas Walford, Esq.

# RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

ANSWERS, EXCEPTIONS TO. — CONSTRUCTION OF ORDER 16, ART. 22, OF MAY 1845.

*The time for filing exceptions to an answer is limited to the period allowed by the Orders of 1845, although the answer may have been filed before those orders came into operation.*

THIS was a motion to take exceptions filed to the defendant's answer off the file for irregularity.

The bill was amended the 9th of June 1845, and the answer was put in the 15th of Aug. 1845. By the 16th Order of May 1845, Art. 22, the plaintiff is allowed *six weeks* to except for insufficiency, at the expiration of which time, if exceptions are not filed, the answer is to be deemed sufficient. This period in the present case expired on the 9th of Dec. inst., and the exceptions were filed on the 10th.

Mr. Elderton, in support of the motion said, that the suit having been brought within the operation of the Orders of May 1845, by the 3rd of those orders the exceptions must be considered as improperly filed.

Mr. Kindersley, contra, urged, that as the new orders were not in operation when the defendant's answer was put in, he was entitled to avail himself of the old practice, by which he was allowed eight weeks from the termination of the long vacation. The Orders of 1845 did not apply to the long vacation of this year, but began with the first vacation in the next year.

The Master of the Rolls having taken time to consider his judgment, said, that as the case was clearly within the Orders of May 1845, the exceptions were filed a day too late. His lordship added, that his only difficulty was respecting the costs of the motion, and as there was so little ground for the objection he should make no order.

Mr. Elderton said, as the exceptions would thus remain on the file the defendants ought to be allowed time to consider whether they would submit, and the vacation being close at hand, he asked for time till the next term.

The Master of the Rolls said, he would allow them till the end of the first four days of next term.

*Whitmore v. Sloan.* Dec. 22, 1845.

PAYMENT OF MONEY INTO COURT. — AD-MISSION REQUIRED IN ANSWER.

*The court will not on motion order money into court, admitted to have been received by a defendant, unless there is a clear admission in the answer of the precise sum referred to in the notice of motion.*

*If a balance sought to be brought into court is*

*only to be made out by calculation, the court will not make any order; but the defect may in certain cases be supplied by affidavit.*

THE defendant in this case had been the solicitor of the testator in the pleadings named, and by his answer admitted, that he had received the several sums set forth in the 3rd schedule to his answer, on account of the rents of the testator's estate, and he stated, that at the time of the death of the testator there was due to him for costs the sum of 408*l.*, and that he had also received rents to the amount of 538*l.* since the testator's death.

Mr. Turner and Mr. Stevens now moved for payment into court of the two sums of 408*l.* and 538*l.*

The Master of the Rolls said, the first sum appeared to be made out only by calculating the sums received and deducting the balance, and the court never made the order, where the amount for which the order was sought could only be ascertained by calculation. The precise sum must appear by the answer, although in certain cases the court received an affidavit to show how a balance was ascertained. Here there did not appear to be any admission that the balance was in the defendant's hands.

Mr. Turner then read a passage in the answer in which it was stated, that the amount in the defendant's hands at the death of the testator for rents received by him, was 904*l.*, and that the testator being indebted to him in the sum of 408*l.* for costs, the said 904*l.* was reduced to 496*l.*; whereupon the court made the order.

*Elliot v. Morris.* Dec. 20, 1845.

## Vice-Chancellor of England.

AMENDMENT OF BILL. — 68TH ORDER OF 1845.

*It is not sufficient, under the 68th Order of 1845, for the purpose of obtaining leave to amend, to show that due diligence has been used during part of the time allowed for amending, if there appears to have been unnecessary delay during another part.*

THIS was a motion for leave to amend, the time allowed by the orders having elapsed. It appeared that the solicitor in the country had had the answer in his possession for 46 days after it had been filed, before he sent it to counsel, to advise upon its sufficiency and the necessity for amending the bill. This he did on the 14th of January, 1845. The case was a complicated one; and, owing to the delay occasioned by the sitting of the court during term at Westminster, the opinion of counsel, suggesting extensive amendments, was not obtained till the 13th of February. Further amendments were afterwards advised. So that the plaintiff was not in a condition to procure his order till the 30th of March. The motion was originally made in July last, and stood over for further affidavits.

Mr. Stuart and Mr. Rolt, for the motion,

insisted upon the impossibility of getting the amendments prepared sooner than had been done, after the case had been laid before counsel.

Mr. *Bethell* and Mr. *Bacon*, contra, remarked upon the delay which had occurred before the case was submitted to counsel, for which no attempt was made to account; and relied upon the 68th Order of 1845, by which, they urged, the case was now governed.

The Vice-Chancellor said, that the motion must be treated as made under the new orders, though notice of it had been given long before they came into operation; and it did not appear to him that the affidavit in support of it came up to the exigency of the 68th Order, because it showed diligence during a part of the time only, and did not show that due diligence had been used during the first 46 days after the answer was filed.

Motion refused.

*Winnall v. Featherstonehaugh*, Dec. 15th, 1845.

#### Vice-Chancellor Knight Bruce.

#### ORDERS OF 1828 AND 1845. — DISMISSAL OF BILL.

*Semble*, That a defendant who was entitled to the dismissal of the bill under the Orders of 1828, prior to those of 1845 coming into operation, but who would not be entitled to dismiss under the latter, ought to proceed according to the old practice.

Mr. *Metcalf* moved to dismiss the bill in this case, upon the ground that no steps had been taken since the filing of the answer on the 28th of February last. The two months and six weeks allowed under the Orders of 1828 would have expired long before the vacation, previously to which the defendant might have moved to dismiss the bill. If, therefore, the 114th of the Orders of 1845, did not apply, the motion would be regular, according to the old practice.

Vice-Chancellor *Bruce* said, that as the Orders of 1828 applicable to the case were abrogated or discharged by the first Order of 1845, he apprehended that the defendant must proceed under the practice existing prior to 1828, namely, move to dismiss after the expiration of three terms.

*Whitworth v. Whitworth*. Lincoln's Inn, Dec. 10, 1845.

#### SUPPLEMENTAL BILL.—PARTIES.—ABATEMENT.

*Pending the original suit, and after a reference to the Master, one of the female plaintiffs had married a defendant, a settlement being made of the wife's interest in the subject matter of the suit. The husband and the trustees of the settlement were made defendants in the supplemental suit, but the other defendants to the original bill were omitted.*

*Held*, That the supplemental bill was defective by reason of the omission.

The original suit was commenced in 1838 by the plaintiff, *Elizabeth Davies*, and others, for the purpose of having annuities raised out of the estate of the testator in the cause. A decree was pronounced in February 1842, by which it was referred to the Master to ascertain whether all the parties interested in the annuities were parties to the suit, and to take the accounts. One of the female plaintiffs subsequently had married the defendant, *Richard Price*. A settlement had been executed, by which the wife's interest in the fund had been assigned to trustees to the wife's separate use, with remainder to the husband and the issue of the marriage. A supplemental bill had been filed against the husband and the trustees; the defendants to the original bill not being made parties. The cause came on for hearing.

Mr. *R. W. Moore*, on behalf of the trustees of the settlement, and *R. Price*, submitted, that the suit had abated by the marriage of one of the plaintiffs, and that all the defendants to the original bill ought to have been made defendants to the supplemental bill. He cited *Lord Redesdale* on Pleading, p. 57.

Vice-Chancellor *Bruce*. I rather think it is an entire abatement. As against the original defendants, who are not defendants to the supplemental bill, the suit is not resuscitated.

Mr. *W. R. James* for the plaintiffs. This is not an abatement which admits of being cured by revivor; the suit is simply defective by the marriage of a co-plaintiff. The only parties in whom any new interest has been created are before the court. The original defendants cannot be interested to this extent. There is no decided case in support of the objection.

Vice-Chancellor *Bruce*. There may be no case expressly deciding this point, but in this court, although we are protestants we have great faith in tradition. I think that as against the defendants, who are not parties to the supplemental bill, it is clearly a dead suit. I think it is very possible, although I have not considered the subject very closely, that some alteration in the practice might be beneficially introduced. I think, however, that the rule of court is as I have decided it. If they are made parties, and they will consent to appear at the hearing without answer, I can hear the case by consent without any expense. But at present I cannot consider them as alive for the purposes of the suit.

*Davies v. Price*. Lincoln's Inn, Dec. 13, 1845.

#### Queen's Bench.

(Before the Four Judges.)

#### INDICTMENT.—CERTIORARI.—COSTS UNDER 5 & 6 W. & M. C. 11, s. 3.

*Several persons were indicted for a nuisance in erecting an embankment on the river Thames. The indictment was removed by certiorari by one of the defendants, and*

they were found guilty. The expenses of the prosecutors were paid out of a certain fund, on a promise on their part to repay the money so advanced. Some of the prosecutors had been injured in their business as watermen by reason of the embankment. A side-bar rule had been obtained for referring the matter to the master to tax the costs of the prosecutors, under 5 & 6 W. & M. c. 11, s. 3.

1. Held, that the prosecutors were parties grieved, within the meaning of the 5 & 6 W. & M. c. 11, s. 3.
2. Held, that the prosecutors were entitled to costs under the 5 & 6 W. & M. c. 11, s. 3, although the expenses of the prosecution had been advanced by other parties under a promise to repay them.
3. Held, that the fact that the indictment had been removed by one of several defendants, is no ground for discharging a side-bar rule for referring the matter to the master for taxation of costs.

THE defendants were indicted and convicted of a nuisance. The indictment, which charged the defendants with having erected a certain embankment on the river Thames, so as to impede the navigation, had been removed into this court by writ of certiorari by one of the defendants. At the time sentence was passed on the defendants, a side-bar rule was obtained, which ordered, "that it be referred to the coroner and attorney of this court to tax the costs to be paid by the defendants to the prosecutors or their attorney. In Michaelmas Term a rule was obtained calling on the prosecutors to show cause why the side-bar rule should not be discharged. The last rule was obtained on the ground that the prosecutors were nominal parties, and not the real prosecutors of the indictment, and were not parties grieved or injured within the meaning of the 5 & 6 W. & M. c. 11, s. 3. It appeared by the affidavits that the expenses of the prosecution had been paid out of the funds of an association, and that the prosecutors had been paid their expenses as witnesses. That although money had been advanced to the prosecutors for the purposes of the prosecution, yet that they were under a promise to repay the money so advanced. That several of the prosecutors, who were free watermen of the City of London, had been greatly injured by the embankment which had been erected.

Mr. M. Chambers, Mr. Keane, Mr. Pigott, and Mr. H. Hill showed cause.

The affidavits show that the prosecutors are the real and *bond fide* prosecutors of this indictment. Where a person is both prosecutor and witness, there is nothing illegal in his receiving his expenses as a witness, where the prosecution is the act of many, and its expenses are defrayed out of a common fund. The prosecutors are also parties grieved within the meaning of the statute. The grievance contemplated by the statute was one that pressed

on the prosecutor more than the rest of the subjects, but his right to costs is not prejudiced by the fact that many others may suffer from the same grievance of which he complains. In *Rex v. Taunton, St. Mary*,<sup>a</sup> several persons were held entitled to costs under the statute as prosecutors of an indictment for the non-repair of a highway. These prosecutors cannot have become disentitled to costs because they have received assistance from the funds of a society. (Stopped by the court.)

Mr. Serjeant Jones and Mr. Badeley, contra.

It is laid down in the books of practice, that the prosecutor, to bring himself within the benefit of the statute, must be both a party grieved and have prosecuted at his own expense. This construction of the statute is supported by the cases of *Rex v. Incedon*,<sup>b</sup> and *Rex v. Cook*.<sup>c</sup> There are several persons included in this prosecution who cannot be considered the prosecutors, and who have been paid their expenses. [Lord Denman, C. J.—This is an objection which might be urged when the taxation takes place.] The indictment was removed by only one of the defendants, and it was irregular to call upon all the defendants to pay the taxed costs.

Lord Denman, C. J.—We think it has been made out that there is a prosecutor and a party grieved, and under those circumstances we ought to direct that his costs be paid him. The other matters in dispute may be settled when the case comes before the master for taxation. This rule will therefore be discharged.

Rule discharged, without costs.

*The Queen v. Sir Richard Dobson and others*, Michaelmas Term, 1845.

#### Queen's Bench Practice Court.

PLEA OF NUL TIEL RECORD.—CONCLUDING TO THE COUNTRY. — FRIVOLOUS DEMURRER.

*If a plea of nul tiel record conclude to the country, the plaintiff may reply without regard to the improper conclusion, and is not bound either to join issue to the country, demur, or move to strike out the improper conclusion; and a demurrer to a replication, upon the ground of its having disregarded such a conclusion, was set aside as frivolous.*

DEBT upon a replevin bond; and the declaration having set forth, in the usual manner, a judgment in the Queen's Bench in favour of the defendants in replevin, (the present plaintiffs,) the now defendant (the plaintiff in replevin) pleaded, nul tiel record, concluding thus:—"And of this the defendant puts himself upon the country." Thereupon the plaintiffs made up and delivered an issue containing a

<sup>a</sup> 3 M. & S. 465.

<sup>b</sup> 1 M. & S. 268.

<sup>c</sup> 1 Mood. & Rob. 526.



replication "that there is such a record as the plaintiffs have alleged, and this they are ready to verify by the said record, when, where, and in such manner as the court here shall order," &c.; and the issue was accompanied by a notice that the plaintiffs would, on November 24, produce the record in court. The defendant, however, returned the notice, stating that he retained the issue as a replication only, and demurred specially to the replication, upon the ground that the defendant having concluded his plea to the country, the plaintiffs were bound either to accept an issue to the country, or to demur to the plea.

*Rawlinson* now (Nov. 24) showed cause against a rule for setting aside the demurrer as frivolous, and contended, that whether the plea was well or ill concluded, the demurrer must stand, for the plaintiffs had no right to plead over to the issue tendered by the defendant, and substitute a different mode of trial in the replication; and that they should either have joined issue to the country, demurred to the plea, or have applied to the court to strike out the improper conclusion contained in it. *Stephen* Pl. ed. 3, p. 238, note (e).

*Fitzherbert*, contra. — The conclusion to the country, in the defendant's plea, is a mere artifice to entrap the plaintiffs, whose only course was to reply as they have done, and had they adopted any other, the term would have been lost. The conclusion to the country in the plea is mere surplusage, and if it were struck out, the plea would be perfectly good without the addition of any other conclusion; it having been held, that pleas merely in the negative need not be concluded with a verification. *Bodenham v. Hill*, 7 M. & W. 274; *Attwood v. Taylor*, note by *Manning*, Serjeant, 1 M. & G. 288, note (a). [*Patteson*, J. — If a plea of set-off were wrongly concluded to the country, could you reply *nil debet*? I think you could not.] Perhaps not; but it is submitted that if it concluded first with a verification, and then to the country, such a replication would be good.

*Patteson*, J. — As the plea would have been good without any conclusion at all, I think that the conclusion to the country may be rejected as surplusage. The replication therefore is proper, and the rule must be absolute for setting aside the demurrer as frivolous.

Rule accordingly.

*Fitzherbert* then called for the record, and the plaintiffs recovered judgment.

*Townsend v. Smith*, Michaelmas Term, Nov. 24, 1845.

### Eschequer.

#### ADVERSE CLAIMS.—INTERPLEADER.

*A defendant who had purchased certain goods received notice from a third party that the goods belonged to him. The vendor sued the defendant for the price of the goods, and the claimant sued the defendant in trover. Held, that this was not a case in which the defendant could be relieved under the Interpleader Act.*

*Atherton* moved for a rule under the first section of the Interpleader Act, 1 & 2 Will. 4, c. 58. It appeared that the defendant had purchased of the plaintiff several chests of tea, but before they were paid for the defendant was served with notice by a third party, that the tea belonged to him, and requiring the defendant not to pay the price of the tea to the plaintiff. Subsequently the plaintiff brought an action of debt against the defendant for the price of the tea, and the third party sued the defendant in trover. Under these circumstances it was submitted, that as the defendant was willing to bring into court the price of the tea, he was entitled to relief.

*Pollock*, C. B. In the case of *James v. Pritchard*, 2 M. & W. 44, the circumstances were very similar to the present, and this court after granting a rule to show cause, decided, that it was not a case within the Interpleader Act.

*Parke*, B. In this case there can be no interpleader, for the parties do not claim the same thing; the one seeks to have the benefit of a contract, the other to recover the subject matter of it. The price agreed to be paid for the tea may exceed its real value,—for a party may make an improvident bargain—but the claimant could only recover the actual value.

*Alderson*, B. The Interpleader Act was intended to be a substitute for the old mode of relief by bill in equity, and it is clear that in a case like this there could be no interpleader in equity.

Rule refused.

*Stanley v. Sidney*. Michaelmas Term, Nov. 1845.

### Court of Bankruptcy.

#### SMALL DEBTS ACT,

*Service of summons under—Power of Commissioner when defendant is in custody.*

THE defendant, who was in custody under an order made by Mr. Commissioner Evans under the Small Debts Act, (8 & 9 Vict. c. 127,) came before that learned commissioner, under the 3rd section of the act, to be discharged out of custody by leave of the commissioner, having paid the debt and costs, under the following circumstances:—

A summons was duly issued from this court on the 3rd Dec., calling on the defendant to appear before the commissioner at Basinghall Street, on the 9th day of Dec., at 11 o'clock, A.M., to answer such questions as may be put to him, touching not having paid to one Edward Lewis the sum of 17l. 19s., recovered in a certain judgment of the Court of Queen's Bench. The summons was served on the defendant at his residence in Arundel Street in the Strand, at half-past 10 o'clock on the morning of the 9th Dec., and the case was called on at the sitting of the court at 11 o'clock on the same day, when, on default of the defendant's appearance, an order was made to commit him to prison for 40 days. The defendant now stated that he had a good an-

swer to the summons, having in fact discharged the debt, and should have appeared to show cause against it if it had been served on him in sufficient time. He had paid the amount under protest, to procure his liberation, and now asked to be allowed to show cause against the summons.

The learned *Commissioner* was of opinion, (after referring to the 3rd section,) that he had no authority under the act but to order the defendant's discharge out of custody, upon the plaintiff or his attorney signing an acknowledgment of payment of the debt and costs. The defendant could not now be heard against the summons. He had ordered the affidavit of service of the summons to be examined, and it appeared it stated generally that the summons was personally served on the defendant on the 9th Dec., not naming any hour. This was consistent with the defendant's statement. It was certainly a hardship that the summons should be served so shortly before the hour appointed for the defendant's appearance, and he had given directions to his registrar to prevent the recurrence of this, by taking care that in future the affidavit of service showed that the summons was served a reasonable time before the day appointed for appearance.\* There was no provision on the subject in the act of parliament.

The plaintiff then indorsed an acknowledgment of payment on the order of imprisonment, and the defendant was discharged out of custody.

*Leavis v. Edwards*, Dec. 13, 1845.

## CHANCERY SITTINGS.

*Hilary Term, 1846.*

*Master of the Rolls.*

AT WESTMINSTER.

Monday	Jan. 12	{ Motions and remaining Petitions.
Tuesday	13	{ Petitions—The unopposed first.
Wednesday	14	{
Thursday	15	{ Pleas, Demurrers, Causes,
Friday	16	{ Further Directions, and
Saturday	17	{ Exceptions.
Monday	19	{
Tuesday	20	{ Petitions—The unopposed first.
Wednesday	21	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday	22	{ Motions.
Friday	23	{ Pleas, Demurrers, Causes,
Saturday	24	{ Further Directions, and
Monday	26	{ Exceptions.
Tuesday	27	{ Petitions—The unopposed first.
Wednesday	28	{ Pleas, Demurrers, Causes,
Thursday	29	{ Further Directions, and
Friday	30	{ Exceptions.
Saturday	31	{ Motions.

\* It would be desirable if there was some general rule on this subject. As the consequence of default in appearance is forty days' imprisonment, the party summoned should have reasonable notice.

Short Causes and Consent Causes every Tuesday at the sitting of the court.

NOTICE.—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

## COMMON LAW SITTINGS.

*Hilary Term, 1846.*

*Queen's Bench.*

MIDDLESEX.

1st Sitting—Tuesday	Jan. 13
And two following days at Eleven o'clock.	
2nd Sitting—Friday	Jan. 16
And subsequent days at Eleven o'clock.	
3rd Sitting—Thursday	Jan. 29
At ¼ past Nine o'clock precisely, for Undefended Causes only.	

The old and new undefended causes, with notice, will be taken first, then as many old and new causes as shall have been appointed, in their order, (long causes only being omitted), and all long causes will stand over, till after term—and parties are desired, to prevent the unnecessary appointment of them; but if any short causes are, through mis-information, omitted, the court will appoint them, on application, in the presence of the opposing parties, or in their absence, if they shall have had due notice to attend.

Sittings after Term, Monday, Feb. 2nd—For common juries only, until Thursday Feb. 12, when special juries begin, and they will be appointed for that day and every day until Feb. 18th, inclusive.

LONDON.

*In Term.*

Friday (At Twelve) Jan. 30  
For Undefended Causes and such as the Judge considers fit to be taken.

*After Term.*

Thursday, February 3rd, to adjourn to Thursday, February 19th, Adjournment-day; and the days for special and common juries will be adjusted when the proportions of each shall be better known.

*Exchequer of Pleas.*

*In Term.*

MIDDLESEX.

1st Sitting, Tuesday	Jan. 13
2nd Sitting, Monday	19
3rd Sitting, Tuesday	27

LONDON.

1st Sitting, Saturday	Jan. 17
2nd Sitting, Saturday	24
(And by adjournment if necessary,) Monday	26

*After Term.*

MIDDLESEX.

LONDON.

Monday	Feb. 2	Tuesday	Feb. 3
(To adjourn only.)			

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

## BANKRUPTCY DIVIDENDS DECLARED.

*From Dec. 2nd, to 26th Dec., 1845, both inclusive.*

Austin, J., Manchester, Erub Maker. Interest on debts proved declared.  
Barker, T. T., Sandiacre, Derby, and J. Palmer, sen., Stapleford, Notts, Cotton Doublers. Div. 3s. 8d. on separate estate of T. T. Barker, div. 3s. 9d.

- Bates, W. H. Div. 6d.  
 Batt, J., Old Broad Street, Silkman. On separate estate of J. Batt, div. 14s. 6d.  
 Bennett, J., New City Chambers, Bishopsgate Street Within, Timber Merchant. Div. 1s. 3d.  
 Bourne, T., Liverpool, Corn Factor. Div. 10d.  
 Bradley, J. P., and G. J., Great St. Helens, Wine Merchants. Div. 1s. 11d.  
 Bradley, J. P., separate estate of, Great St. Helens, Wine Merchant. Div. 6s. 2d.  
 Braithwaite, J., Morpeth, Northumberland, Inn-keeper. Final div. 3s. 2½d.  
 Brett, J., St. Edmunds, Suffolk, Currier. Div. 6d.  
 Brooker, J., Southampton Row, Bloomsbury, Carver. Div. 1s.  
 Brown, W., and T. Preston, jun., Manchester, Cotton Spinner. Div. 4s. 7½d., on separate estate of T. Preston, jun., div. 9s.  
 Buisson, J. S., Brabant Court, Philpot Lane. Div. 1s. 5d.  
 Campion, J., and W. Whitby, Ship Builders. Final div. 2s. 7½d., on separate estate of J. Campion. Final div. 3s. 11d. Div. on separate estate of R. Campion, 3s. 9d.  
 Crespin, J. C., 31, East Cheap, Shipping Agent. Div. 4d.  
 Crosby, W., B. Vallentine, and B. White, Houndsditch and Lendenhall Street, and of Birmingham, Toy Dealers. Div. 1½d.  
 Curtis, J., Liskeard. Div. 4s. 4d.  
 Danson, T., Liverpool, Merchant. Div. ¾nds of a penny.  
 Dees, W., J. Dees, and J. Hogg, Newcastle-upon-Tyne, Builders. Div. on separate estate of J. Dees, 10d.  
 Eastwood, T., Brighton, Grocer. Div. 5s. 1½d.  
 Farrow, J. W., and J. Barron, St. Ann's Place, Limehouse, Pump Manufacturers. Div. 5s.  
 Fisher, J. and E., Maghull, Wine Dealers. Div. 3s. 10d.  
 Gilchrist, G., and J. M., Liverpool, Merchants. Div. 6½d.  
 Green, G. H., and G. C. Green, Bucklersbury, Stationers. Div. 1s. 9d.  
 Harman, J., Meadow Bank Brewery, Whitefriars, Brewer. Div. 6d.  
 Hayward, W. H., and R. Collier, Manchester, Cotton Spinners. Final div. 12s. On separate estate of W. H. Hayward, div. 20s.  
 Heyes, Litherland & Co., Liverpool, Merchants. Div. 2½d.  
 Hodgson, J., Liverpool, Scrivener. Div. 1s. 9d.  
 Howden, J., Wakefield, York, Ironfounders. Div. 4s. 6d.  
 Hughes, J., Chelmsford, Shoe Maker. Div. 4d.  
 Jackson, J. E., Birmingham, Dealer in Iron. Final div. 5½d.  
 Jevons, S., Silver Street, Lincoln, Shoe Maker. Div. 2s. 1d.  
 Johnson, T., sen., W. Johnson, and C. Mann, Romford. Div. 1s.  
 Laurie, G., Fleetwood-on-Wyre, Chemist. Div. 3s. 4d.  
 Lee, W., Charing Cross, Hosier. Div. 5½d.  
 Lewis, J. N., St. George's Fields, Woolwich, Kent, Draper. Div. 7s. 6d.  
 Loraine, T., Newcastle-upon-Tyne, Bookseller. Div. 3s.  
 Lusson, J. B., Great Queen Street, Mile Town, Sheerness, Clerk. Div. 16s. 6d.  
 Marshall, J., and T. Collier, Manchester, Merchants. Div. ½ths of a penny.  
 Menzies, W., Gloucester, Draper. Div. 5s.  
 Mitchell, B., Lime Street, Merchant. Div. 4½d., separate estate, final div. ½ths of a penny.  
 Mahon, J., and R. Simons, Mincing Lane, Wine Merchants. Div. on separate estate of J. Mahon, 20s. On separate estate of R. Simons, div. 8s. 4d. Firm div. 2s.  
 Montrie, J., Bristol, Music Seller. Final div. 3d.  
 Moyes, W., and T. Moring, Camomile Street, Car-men. Div. 3s.  
 Nicholson, R., Stockton, Bookseller. Div. 3s. 3d.  
 Osborne, H. R., Truro, Grocer. Div. 1s. 9d.  
 Pott, J., Old Broad Street, Silkman. Div. 4s.  
 Patterson, T., and J. Codling, Sheriff Hill, Durham, Earthenware Manufacturers. Final div. 6s. 9d.  
 Petrie, J. C., Bedlington, Miller. Div. 5d.  
 Pitt, J., Plymouth, Grocer. Final div. 2½d.  
 Reay, W., Northumberland, Ship Builder. Div. 8d.  
 Schofield, C., Kingston-upon-Thames, Coal Merchant. Div. 9d.  
 Scott, W., Manchester, Grocer. Div. 7d.  
 Simister, T., 3, Downing Street, Confectioner. Div. 2½d.  
 Smallwood, S., Birmingham, Grocer. Final div. 1s. 3½d.  
 Smirk, J. E., Wrekin Tavern, Broad Court, Bow Street, Victualler. Div. 2s. 8d.  
 Smith, A. and J., Rochdale, Merchants. Div. 4s. 3d.  
 Smith, T. C., and R. Hayes, Henrietta Street, Covent Garden, Hotel Keepers. Div. 9s. 6d. On separate estate of T. C. Smith, div. 20s.  
 Solly, J., sen., St. Mary Axe, Merchant. Div. 8s.  
 Spencer, J., Denholme Carr, Thornton, Bradford, Worsted Manufacturer. Div. 2s. 6d.  
 Sudgen, J. and D., Springfield, Kirkburton, York, Fancy Cloth Manufacturers. Final div. 7d.  
 Summers, W., and N. Rae, Manchester, Rope Makers. Div. 11d. Div. on separate estate of N. Rae, 20s.  
 Tallent, A., sen., Ipswich, General Merchant. Div. 1s. 3d.  
 Wardell, W. J., Pickering, York, Wine Merchant. Final div. 9½d.  
 Warr, H., Bridport, Dorset, Currier. Div. 5s.  
 Welch, J., Coach and Horses, Holloway, Victualler. Div. 1s.  
 Wilson, B. W. Holmes, Westmoreland, Apothecary. Final Div. 5d.

### THE EDITOR'S LETTER BOX.

WITH the New Year, we commence a further enlargement of the *Legal Observer*, which will consist, especially during the sitting of parliament, of 24 pages. The advertisements will be printed separately by way of supplement, either in 4 or 8 pages extra, as occasion may require.

The first part of the Digest of Cases will probably be ready for our next number, on a plan that we trust will be very generally approved.

It will be more convenient for the "Legal Obituary" to be given monthly, than weekly, except where some special notice may be deemed requisite.

The paper of Dr. Gaerth, the German advocate, on the case of Baron de Bode, shall be immediately considered.

The Stamp Act requires the whole duty of 120*l.* to be paid by attorneys of the Palatine Courts, in order to be admitted into the courts at Westminster without deducting the previous duty of 60*l.* It is not so in the Welsh Courts.

The inquiries of "An Original Subscriber," regarding the allowance of Land Tax out of quit, or free rents, shall be attended to.

# The Legal Observer.

SATURDAY, JANUARY 10, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE LEGAL PROSPECTS OF THE SESSION.

At the near approach of the meeting of parliament, it may be useful to remind our readers of the several important subjects affecting the profession which will be brought under consideration.

First, however, we may congratulate our brethren on the return of Lord Lyndhurst to his high office at the head of the law; and we sincerely hope that his lordship's health has been so completely restored, that he will be able (as doubtless he will be willing) to apply his unrivalled powers to the due investigation of all projects of law reform, and that he will stay their progress unless convinced that they will be really beneficial.

Rumour is at work on the great question of the best mode of administering justice in Chancery. We are told that the chief of the court will be made a permanent judge; and that the Lord Chancellor only will be removable on a change of ministry. A distinguished equity and conveyancing lawyer is spoken of as the probable chief; but we cannot trace the report to a sufficiently authentic source. We believe that the opinion of professional men is generally adverse to this proposed separation of the political and judicial functions of the Lord Chancellor. They admit, indeed, the inconvenience of his resignation, amidst causes heard, or partly heard, and not decided; but for the honour of the law they hold to the ancient order of things, and for the good of the public they think it expedient that an eminent lawyer should

preside in the Upper House, and bear due sway in the councils of the state.

Amongst the changes which it is supposed will accompany even a moderate alteration of the Corn Laws, (if any alteration whatever be at present permitted,) we hear there will be a complete revision of the Stamp Act, and that whilst the duties will be arranged on an improved plan, considerable relief will be afforded on the mortgage and conveyance of property. This is a reform “devoutly to be wished;” for if the stamp burden be materially reduced, the number of these transactions will be increased, and the revenue will probably sustain but little if any loss. All branches of the profession are interested in promoting this object, and we trust they will exert their influence to effect a satisfactory adjustment. Amongst other things, the deed stamp on small conveyances should be reduced, and the lease for a year stamp in all cases abolished. As regards the larger branch of practitioners, this will be the time to co-operate in exertions for removing the “poll-tax,” or certificate duty, levied on the exercise of one branch of the profession, from which the other is exempt, and which is not inflicted on any grade either of the clergy or the medical profession.

The bill for the amendment of the Law of Bankruptcy and Insolvency, which was brought in at the close of the last session by Mr. Masterman and Mr. Hawes, will be immediately revived. We stated the provisions of this measure in our last volume, (p. 460.) In substance it seeks to afford creditors greater protection against fraud and wilful extravagance, by facili-

tating an early distribution of the debtor's property;—by conferring increased powers for its seizure and security;—by restoring the power of imprisonment in cases of fraud and gross misconduct;—by increasing the remedies of judgment creditors;—providing for the prosecution of fraudulent bankrupts; and lastly, by distributing the effects of deceased traders, for whom no personal representative appears in a reasonable time. A committee of the Commercial Association, appointed at the public meeting last year of merchants and traders, are actively engaged on the subject, and meet every week. A committee also has been appointed of the Incorporated Law Society, to consider the proposed alterations; and there seems no doubt that some material amendments must be effected to protect trade and commerce. The Small Debts Act (however imperfectly framed) has done some service in the powers it conferred for examining into the debtor's property; but it did much harm in abolishing imprisonment in execution. The clauses also by which all the local courts in the country were enlarged both in pecuniary and territorial jurisdiction, should undergo revision; and if local courts are to be established to the proposed extent, they ought to be placed on a better footing than can be provided by the recent act. To this subject we shall have occasion soon to revert.

The Ecclesiastical Courts Bill will no doubt be revived. The main objects of this measure were: 1st, To abolish a large number of petty local courts; 2nd, To establish one general Court of Probate in London; and, 3rd, To extend the jurisdiction of the Ecclesiastical Courts. We think the first two propositions highly desirable; but instead of extending the jurisdiction of these courts in regard to real property and the administration of assets, we would transfer all that part of it from Doctors' Commons to the courts at Westminster, where it legitimately belongs. In passing, we would observe, that in the reform of these, as of all other courts and offices, there should be a liberal compensation allowed to the officers whose interests are affected by the change. It is both unwise and unjust to deal in aiggardly way with these official persons.

Amongst the measures which we trust will be again introduced, is that which will enable the process of the common law courts to be served abroad. Hundreds, if not thousands of debtors are living on the

Continent on incomes derived from this country, which cannot be reached without the expensive process of outlawry, and even then very imperfectly. The proposed measure is scarcely an alteration of the law, but merely conferring new powers for carrying it into effect, and administering justice effectually where hitherto it has been denied.

Many other bills introduced in the last session were more or less discussed and then postponed. They may be classed as follow:—

The Charitable Trusts Bill, by which summary relief was to be afforded where the estate did not exceed 1,200*l.* in the whole, or 60*l.* annually;—but this, which might have been so far useful, was not the limit of the bill: it extended, in other parts of it, to the control of all charities, many of which need no change, and “least of all *such change* as this measure would bring them.”

Then it was proposed to transfer the power of divorce from parliament to the Judicial Committee of the Privy Council. The public feeling is probably against this proposal, but as lawyers we can see no objection to it,—except (no slight matter, however,) the imperfect organization of the Judicial Committee as a court of justice, particularly in reference to the practitioners, and the course of proceeding therein.

Connected with this, was the Bill for Amending the Law of Marriage, and preventing the facilities which exist in Scotland for hastily contracting and with equal haste effecting a divorce from that solemn obligation. This suggestion, we think, cannot fail to be generally approved.

There was also a bill to alter the Church Discipline Act; and from several instances which have appeared before the public within the last twelve months, some amendments in the mode of procedure seems desirable. The judges of the common law courts possess a very wholesome power (always judiciously exercised) over both branches of the profession; and if the dignitaries of the Church possessed the same means of discipline, we think a decided improvement would be effected on the present system.

The great question of a general registry of deeds will be again mooted, and in all probability again rejected. This is too large a subject for the present brief sketch,

and we must defer its consideration till the new bill makes its appearance.

There were also several other projects last session, which we may briefly enumerate, namely:—The Clerks of the Peace and Clerks to Magistrates Bill;—the Administration of Criminal Justice Bill;—the Deodands Abolition Bill;—and the removal, in the City of London, of Restraints on Trade. There was also a bill limiting the right of certain actions of debt to four years;—another, giving compensation for deaths by accident;—one for the examination of parties in civil actions;—and another for declaring the rights of parties in reference to expected future claims. A bill also was introduced for extending the elective franchise, and another for securing the independence of parliament by abolishing the privilege of its members from arrest. This privilege is now, however, very much narrowed, and there are public grounds for preserving it.

There are some other topics which we must here only glance at: such as the removal of the courts;—the alteration of the terms and circuits;—the better arrangement of the business in the common law courts, particularly in the Common Pleas;—the relief of the judges at chambers by delegating the routine business to the masters;—&c. &c.: all which we shall in due course bring before the consideration of our readers.

## PROPERTY LAWYER.

### OPERATION OF MORTGAGES AND BILLS OF SALE ON AFTER-ACQUIRED PROPERTY.

THE class of cases in which a judicial construction is put upon the language of instruments constantly used, either for the transfer of property or for securing advances, is obviously one of great importance to the public, as well as of interest to the legal practitioner; and when cases of this nature are decided upon general principles, the application of which is not confined to the particular case under consideration, such decisions cannot be too soon or too extensively known to all branches of the profession.

The Reports of the Court of Common Pleas have suggested a reference to two cases of the description above alluded to, in which the construction of an assignment by way of mortgage of personal property, and a bill of sale, were respectively con-

sidered, and in both those cases the court held, that after-acquired property did not pass under the instruments in question.

In the earliest of these cases,\* the plaintiff, who was an innkeeper, in consideration of a loan of 200*l.*, assigned to the defendant "all and singular the household furniture, plate, linen, china, glass, brewing utensils, post-chaises, carriages, horses, flys, harness, stock in trade, goods, chattels, and effects of him the said J. Tapfield, in, upon, about, or belonging to all that inn; &c.; and also the tap, yard, stables, buildings, and premises adjoining or belonging thereto, as the same now are in the tenure or occupation of the said J. Tapfield," with a power of entry, containing an authority "to take possession, hold, and enjoy all and every the goods, chattels, effects, and premises," to and for the defendant's own absolute use and benefit; with a proviso, that until default was made in the payment of the 200*l.*, or the interest, the plaintiff should hold and make use of the premises expressed to be assigned, without interruption or disturbance from the defendant. The defendant having entered upon the premises under colour of the mortgage deed, and seized the whole of the effects, including stock in trade and other property not on the premises at the time of the execution of the deed, the plaintiff brought trespass for the seizure of the goods which came on the premises after the deed was executed, and *Patteson, J.*, who tried the cause, told the jury, that under the mortgage deed, the defendants were only entitled to such property as existed in specie at the time that deed was executed; and upon this direction the plaintiff had a verdict.

A rule nisi having been obtained for a new trial, on the ground of misdirection, the defendant's counsel, in support of the rule, contended, that the situation of the parties and the nature of the property left it clear beyond doubt, that the parties must have intended that the deed should comprise the effects upon the premises from time to time: otherwise the security would be of little or no value. On the other hand, it was said in argument, that it was not clear an assignment could be made to comprise property not in existence at the time of the grant; but at all events that point did not arise here, as the deed by its terms did not profess to include property subsequently acquired, and the court would not look beyond the deed to guess at the intention of the parties.

The whole court agreed, that the learned judge put the proper construction on the deed at the trial, and that even if it had been quite certain that the parties intended the deed should embrace after-acquired property, that intention could not prevail, unless the deed contained words sufficient to carry the intention into effect. In the course of his judgment, *Tindal, C. J.*, observed, that "it would have been very

\* *Tapfield v. Hillman*, 6 *Man. & G.* 245.

easy to have so framed the power of entry as to make it extend to all effects found upon the premises at the time that such power should be enforced," a *dictum* which, we shall find, was afterwards questioned. There does not appear to have been any authority cited at either side, either in the argument or judgment.

The more recent case of *Lunn v. Thornton*<sup>b</sup> is in accordance with the decision in *Tapfield v. Hillman*, but it is a stronger case, and appears to have been better considered.

The plaintiff, (Lunn,) who was a baker at Stoney Stratford, in consideration of 112*l.* lent him by the defendant, executed a deed, by which he bargained, sold, and delivered to the defendant "all and singular his goods, household furniture, plate, linen, china, stock and implements in trade, and other effects whatsoever, then remaining and being, or which should at any time thereafter remain and be, in, upon, or about his dwelling-house at Stoney Stratford, &c., and also all his other effects elsewhere." Under colour of this assignment, the defendant afterwards entered upon the premises and seized certain goods then upon the premises, but which were not upon the premises, or in the plaintiff's possession, at the time of the execution of the bill, but were acquired by the plaintiff subsequently. An action of trover having been brought to recover the value of the after-acquired goods, the question for the court was, whether the bill of sale justified the seizure of those goods.

For the defendant it was contended, that the bill of sale covered all the goods of the grantor that might be upon the premises at the time of the seizure, whether there at the time of the execution of the bill of sale or not; whilst the plaintiff's counsel submitted, that the bill of sale could not operate to convey to the defendant goods of which the grantor was not, at the time of executing it, actually or potentially in possession; and it was suggested, that the intimation of opinion thrown out by Tindal, C. J., in *Tapfield v. Hillman*, that the deed might have been framed so as to pass after-acquired property, was extra-judicial, and not justified by any authority.<sup>c</sup>

The court took time to consider its judgment, which was afterwards pronounced by Tindal, C. J., who observed, that the question was not, whether a deed might not be so framed as to give the defendant a power of seizing the future personal goods of the plaintiff which might be acquired by him and brought on the premises. The question was, whether by law a deed of bargain and sale of

goods could pass the property in goods which were not in existence, or at all events which were not belonging to the grantor at the time of executing the deed. After a review of the authorities, the court thought that they were strong to show, that no personal property could pass by grant, other than that which belonged to the grantor at the time of the execution of the deed. Perkins says, "it is a common learning in the law, that a man cannot grant or charge that which he hath not." The only point which the court seemed to think admitted of doubt was, whether the facts of the case brought it within the exception in Lord Bacon's rule,<sup>d</sup>—"Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens, quæ sortiatur effectum, interveniente novo actu." The question therefore was, whether the bringing the goods which were the subject of the action on the premises after the execution of the bill of sale, was such a new act done by the plaintiff as gave the declaration in the bill of sale its effect. Lord Bacon's language was, that "there must be some new act or conveyance, to give life and vigour to the declaration precedent;" which pointed at some new act to be done by the grantor in furtherance of the original disposition, and not the simple acquisition of property at a subsequent time, which, if sufficient, would render the rule itself altogether inoperative. Now the evidence in this case was silent as to the circumstances under which the goods were brought upon the premises, and the court could not say there had been any new act done by the grantor, indicating his intention that those goods should pass under the previous bill of sale. The court was therefore of opinion, that the property in the goods which were the subject of the action was in the plaintiff at the time of the seizure, and the verdict was accordingly entered for him.

The cases in the Common Pleas are quite decisive to show, that a mortgage or bill of sale, in the form usually adopted in such instruments, will not pass after-acquired property; but the question, whether a deed could be framed which would operate on goods not belonging to the grantor at the time when he executed the deed, does not appear to have been directly determined, and the form of such a deed has not even been suggested, so that the question may be said to be left so open as to afford ample exercise for the ingenuity of conveyancers.

## COMMON LAW PRACTICE.

### TIME FOR DELIVERY OF PAPER-BOOKS.

AMONGST our original reports of recent decisions will be found a case of *Hodkins*

<sup>b</sup> 1 Man. Gr. & Sc. 379.

<sup>c</sup> The principal authorities cited were: Perkins, tit. *Grant*, 65, 90; Bac. Max. R. 14; Shep. Touch. tit. *Grant*, p. 241; *Grantham v. Hawley*, Hob. 132; and 2 Rol. Abg. 48, pl. 20.

<sup>d</sup> Reg. 14.

which the Court of Exchequer to the master then in to his understanding of the matter, that it was sufficient under rule Hil. 4, Will. 4, r. 7, if the copies were delivered on the preceding day, when a demurrer was argued on a Monday. The Court said that "four clear days before the day pointed for argument," the parties respectively deliver copies of their books, and in default by one party, the other may deliver copies on the following day. The question therefore whether the four clear days were reckoned exclusive or inclusive of the day that being the last day.

It could appear from a note annexed to the report of the case above mentioned, in the number of Messrs. Meeson and Welsby's Reports just published, that the point decided upon was the subject of further inquiry, for it is stated,<sup>b</sup> that a discrepancy existing in the practice of the different courts in this respect, the matter was taken into consideration by Parke, B., and Wightman and Erle, Js., and the following rule was afterwards promulgated, dated the 12th June, 1845:—"We think that Sunday ought to be counted one of the four days between the delivery of paper-books and the day of argument, except it is the last, when it is to be omitted according to the general rule."

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.

[THIS Digest forms a continuation of the *Analytical Digest* which has been published quarterly for the last fourteen years. Being now incorporated with the *Legal Observer*, each part or section will be made as complete as possible in itself; and for this purpose some alterations (and we hope improvements) have been made in the plan.

1st. The Digest will be divided into Equity, Common Law, Bankruptcy, and Criminal Law; to which will be added, Ecclesiastical, and Admiralty Cases; and Appeals in the House of Lords and Privy Council. 2nd. The reports which admit of sub-division will be arranged into cases of Principle, Pleading, and Practice. 3rd. Each decision will be accompanied by references to the several autho-

rities cited in the course of the argument; and where the decision involves several points, they will be stated separately, and the cases applicable to each appropriately arranged.

Notes on these decisions, so far as they are important to the practitioner, will from time to time be prepared by barristers of the several courts. During the last and present volume many of these articles have appeared under the heads of "Notes on Equity" and "Points in Common Law." They will be regularly continued, and form, we trust, a valuable series of Commentaries accompanying this Digest of Cases. The several parts of the Digest will appear, from time to time, as speedily as a sufficient quantity of materials can be collected. Notices of some of the cases have preceded the Digest, and others will follow.

We commence the series with the Courts of Equity.]

### I. Principles of Equity.

#### ANNUITY.

See *Power of Appointment*.

#### COVENANT.

Equity will interfere in the case of a breach of covenant, notwithstanding the covenantee might not have recovered damages for it, at law.

Equity will not relieve against a breach of covenant, unless the payment of money will be an adequate compensation for it. *Elliott v. Turner*, 13 Sim. 477.

Case cited: *Reynolds v. Pitt*, 19 Ves. 134.

#### CLUB.

See *Partnership*, 2, 3, 4.

#### EXECUTORS.

1. Executors employed an auctioneer, who received the deposits. After some necessary delay, the purchases were completed on the 17th of Dec. 1831. The auctioneer failed to pay over the deposit. The executors, acting under legal advice, took no legal proceedings against him till the 14th March 1832, and the money was lost. The auctioneer was not, at the completion of the sales or afterwards, in circumstances to pay the balance. *Held*, under the circumstances, that, the executors were not personally liable. *Edmonds v. Peake*, 7 Beav. 239.

2. A testator directed his real estate to be sold by his Jamaica executors, and the produce remitted to A. and B., his English executors. B. and C. were the consignees and agents of the testator and of his executors. The assets, including 2,253*l.* part of the produce of the real estate, were remitted from Jamaica to B. and C. on account of the executors in England, and the amount was entered to the credit of the estate of the testator. After the death of B., A. instituted a suit for an account of the receipts of B. and C., on account of the *personal estate* of the testator since his death, but the heir at law was not made a party. The bill specified the item of 2,253*l.*, which the answer stated to be the produce of the real estate.

<sup>a</sup> Vol. 30, p. 346.

<sup>b</sup> Vol. 14, p. 121, where the case is reported under the name of "*Hodgins v. Hancock*, Executor, &c."



The decree directed the account of the dealings and transactions in the bill mentioned, and of receipts of B and C. on account of the testator's personal estate since his death, and the master, in taking the accounts, charged C. with the 2,253*l*. The defendant C. obtained a rehearing of the cause, and excepted to the report, and contended, either that the decree was wrong in authorizing an account of the real estate in the absence of the heir, or that the master had been wrong in including this item; but the court overruled the objection. *Pringle v. Crookes*, 7 Beav. 257.

And see *Trustee*.

#### HUSBAND AND WIFE.

1. A married woman having a life interest in a fund, was living with and was maintained by her husband, but out of her own income, and in a manner very inadequate to it; and he was in very embarrassed circumstances, and had no means of support except his wife's income. The court, nevertheless, refused to order a portion of it to be settled to her separate use. *Vaughan v. Buck*, 13 Sim. 404.

Cases cited: *Ball v. Montgomery*, 4 Bro. C. C. 339; *Beresford v. Hobson*, 1 Msd. 368; *Jacobs v. Amyatt*, ib. 376; *S. C.* 4 Bro. C. C. 542; and see 13 Ves. 479.

2. Where the husband alone incurs a forfeiture under the Marriage Act, (4 G. 4, c. 76, s. 23,) the court has no authority to order any settlement of the wife's property on the issue of the wife by any subsequent marriage. By the 23rd section, where the marriage of a minor is prevented by a false oath, or knowingly without the consent of the parent or guardian, the court, upon the information of the Attorney-General, may declare a forfeiture of all interest in any property accruing to the party so offending by force of such marriage. *Attorney-General v. Malloy*, Beav. 351.

3. A feme covert was entitled to a reversionary interest in a sum of money vested in her husband and other trustees. By deed, expressed to be made between the tenant for life of the one part, and the trustees (including the husband) of the other part, the tenant for life, who alone executed the deed, declared that the trustees should hold the fund on certain modified trusts, whereby the wife's reversionary interest was made subject to her power of appointment by deed or will. The wife died, leaving her husband surviving, having appointed the reversionary interest away from her husband. The husband afterwards died, and the reversionary interest subsequently came into possession. The court considered, that under the circumstances, the husband ought to be deemed to have acquiesced in the arrangement, and accepted the trust for the benefit of the wife's appointees; and held, that the appointees of the wife were entitled as against the representatives of the husband. *Inman v. Whitley*, 7 Beav. 337.

Cases cited: *Purdew v. Jackson*, 1 Russ. 1; *Homer v. Morton*, 3 Russ. 65.

And see *Limitations (Statute of)*.

#### INJUNCTION.

See *Joint-Stock Company: Lien: Tenant for Life*.

#### INTEREST.

The reference to compute interest, under the 16th Order of August 1841, on debts not by law carrying interest, may be made on further directions, although not made at the hearing. *Flintoff v. Haynes*, 4 Hare, 309.

#### JOINT STOCK COMPANY.

A suit by some partners in a joint-stock banking company, on behalf of themselves and the other shareholders, to restrain a creditor of the company from suing the shareholders for a debt alleged to have been inequitably created. The common injunction restrained the defendants from proceeding at law against the plaintiffs touching the matters in question:—*Held*, that the common injunction in terms only protected the plaintiffs named on the record, and that, therefore, a proceeding by the defendants against the other shareholders not individually named, was a breach of the injunction.

That, if the plaintiffs on the record could procure the other shareholders to submit to the same terms as the plaintiffs on the record must submit to, the court would, on an interlocutory application by the plaintiffs on the record, give the same relief or protection to the other shareholders as to the plaintiffs on the record.

That, in the circumstances of the case, a special application was necessary to give the full benefit of the injunction to the shareholders not named in the record; and that for such purpose it was necessary to show that such other shareholders stood in the same situation as the plaintiffs named on the record, but not necessary to show that the other shareholders were, on the merits of the case, entitled to the injunction; and that it was competent to the defendants to show any special circumstances which would make it unjust to extend the benefit of the injunction to the other shareholders. *Lund v. Blanshard*, 4 Hare, 290.

Cases cited: *Stone v. Tiffin*, 3 Amb. 32; *Leonard v. Atwell*, 17 Ves. 385.

Whether in a suit by a few shareholders of a company, on behalf of themselves and the other shareholders, it is competent to some of such other shareholders, who may disprove of the suit, to move the court that the suit, so far as it is instituted on their behalf, may be stayed. *Quere*. *Lund v. Blanshard*, 4 Hare, 290.

Cases cited: *Dundas v. Watson*, 1 Ves. jun. 196; 2 Cox, 235; *S. C.*; *Wright v. Castle*, 3 Mer. 12; *Wilson v. Wilson*, 1 J. & W. 457; *Evans v. Stokes*, 1 Keen, 24; *Tarbutt v. Woodcock*, 6 Beav. 581; *Ward v. Ward*, Id. 231; *Hood v. Phillips*, Id. 176.

And see *Partnership*, 2, 3, 4.

#### JUDGMENT.

See *Outstanding Term*.

#### LEGACY.

1. Doctrine of the court in the construction of testamentary papers containing repeated lega-

cies to the same objects, where the questions are, whether the instruments are intended to be, either wholly or in part, additional or substituted one for another, and whether particular legacies contained in such instruments are substitutional or cumulative. 4 Hare, 201.

2. Legacies by different instruments to the same legatee simpliciter, are cumulative, unless the plain effect of the separate gifts is contradicted by the construction of the latter instruments, or by presumption of law.

The right to the repeated legacies in such cases does not depend upon a legal presumption, but is found in the construction and effect of the instruments, and no extrinsic evidence is admissible to prove that the legatee was intended to take one legacy only.

If the right of the legatee to legacies repeated in different instruments depended upon a legal presumption only, evidence would be admissible to rebut it. *Lee v. Pain*, 4 Hare, 216.

Cases cited: *Hurst v. Black*, 5 Madd. 351; *Hall v. Hill*, 1 Dr. & War. 94; *Coote v. Boyd*, 2 Bro. C. C. 547; *Suisse v. Lord Lowther*, 2 Hare, 424; *Pyne v. Lockyer*, 5 Myl. & Cr. 29; *Russell v. Dickson*, 2 Dr. & Har. 133.

3. Whether the words "in addition," in any case, add to the effect of a bequest without those words, *quære*. *Ib.* 218.

Cases cited: 1 Ves. jun. 473; *Moggridge v. Thackwell*, 1 Ves. jun. 464; *Allen v. Callow*, 3 Ves. 289; *Hooley v. Hutton*, 1 Bro. C. C. 390, n.; *Barclay v. Wainwright*, 3 Ves. 462; *McKenzie v. McKenzie*, 2 Russ. 202. See p. 273.

4. The argument on the omission of the words "in addition," answered by referring to the omission of the words "in substitution."

The repetition in the latter instance of some legacies, and not of others, implies that a benefit is intended in the case of the former legacies greater than in the case of the latter.

The circumstance that the different legacies carry interest from different dates—or whatever else distinguishes the two legacies—is favourable to the claim of the legatee to both.

Legacies to strangers differ from legacies to children, in that, in the former case there is no relative measure of the bounty of the testator, and no ground for presuming that, as to them, every separate instrument is not intended to have a separate operation. *Ib.* 224.

Cases cited: See 2 Hare, 436; *Moggridge v. Thackwell*, 1 Ves. J., 464; *Guy v. Sharp*, 1 Myl. & K. 569; *The Duke of St. Albans v. Lord Beauclerk*, 2 Atk. 636; *Coote v. Boyd*; *Hemming v. Gurrey*, 2 S. & S. 311, S. C. nom.; *Hemming v. Clutterbuck*, 1 Bligh, N. C. 479; *Attorney-General v. Harley*, 4 Madd. 363.

5. The testatrix bequeathed 1,500*l.* to Mrs. B. for her life for her separate use, with remainder to her husband for his life, and with remainder to all and every the child and children of Mrs. B. living at her decease, in equal shares. Afterwards, by a codicil, the testatrix revoked the said legacy of 1,500*l.* given by her will to Mrs. B., her husband and children, and in-

stead thereof gave 1,000*l.* to each of them upon similar trusts for the said Mrs. B., her husband and children, as were contained in her will as to the 1,500*l.* The legatee, Mrs. B., died in the lifetime of the testatrix, leaving her husband and seven children. One child afterwards died in the lifetime of the testatrix: *Held*, that the husband and six children who survived the testatrix were entitled to 8,000*l.*, to be settled for the benefit of the husband, with remainder to the children.

As to the legacy in respect of any child of Mrs. B., who (if Mrs. B. had herself survived the testatrix) should have survived the testatrix and died in the lifetime of Mrs. B., *quære*. *Lee v. Pain*, 4 Hare, 225.

Case cited: *Stewart v. Garnett*, 3 Sim. 398.

6. Reasoning in aid of the construction of repeated legacies where the words "in addition" and "in substitution" are used in some cases, and not in others, and the latter words are only used in cases where diversity of the legacies would otherwise prevent them from being construed as substitutional. *Ib.* 4 Hare, 223.

Application to the earlier instruments of a construction of certain words founded upon the use made by the testatrix of those words in the latter instruments.

The right of a legatee, under the general rule of construction, to several legacies bequeathed by different instruments, is not repelled by circumstances which only raise a mere balance of argument that the legacies are substitutional. In such a case, the pecuniary legatees, and not the residuary legatees, are entitled to the benefit of the doubt which the form of the bequests has created. *Lee v. Pain*, 4 Hare, 236.

Cases cited: *Mayor, &c. of London v. Russell*, Rep. temp. Finch, 290; *Bristow v. Bristow*, 5 Beav. 289; *Duke of St. Albans v. Beauclerk*, 2 Atk. 636; *Coote v. Boyd*, 2 Bro. C. C. 521; *Attorney-General v. Harley*, 4 Mad. 263; *Hemming v. Gurrey*, 2 Sim. & S. 311; 1 Bli. N. S. 479.

7. The decision in the case of the *Duke of St. Albans v. Beauclerk* is founded upon the consideration that the codicils were part of the same instrument as the will.

Cases in which the effect of the first gift would depend in some measure on the events which should happen amongst the legatees, and in which repeated bequests have been construed as substitutional, from changes amongst the legatees, or alterations in their position, which had occurred between the several instruments. *Lee v. Pain*, 4 Hare, 242.

Cases cited: *Allan v. Callow*, 3 Ves. 289; *Osborne v. Duke of Leeds*, 5 Ves. 369; *Coote v. Boyd*, 2 Bro. C. C. 521; *Attorney-General v. Harley*, 4 Mad. 263; *Hemming v. Gurrey*, 2 S. & S. 311; 1 Bli. N. S. 479; *Barclay v. Wainwright*, 3 Ves. 462; *Gillespie v. Alexander*, 2 Sim. & St. 145; *Campbell v. Lord Radnor*, 1 Bro. C. C. 271; *Moggridge v. Thackwell*, 1 Ves. jun. 464; *Fraser v. Byng*, 1 Russ. & Myl. 90.

8. Difference of construction, where all the legatees in a will are provided for in a codicil,

and where the codicil contains repetitions of some of the legacies in the will, but not of all.

**Legacy to "Miss S.,"** if more than one person answering that description, must be intended the eldest. *Ib.* 249.

Cases cited: *Scott v. Fenoulhett*, 1 Cox 79; *Stebbing v. Walkey*, 2 Bro. C. C. 85; *Garvey v. Hibbert*, 19 Ves. 125; *Tomkins v. Tomkins*, id. 126 n.; *Berkeley v. Palling*, 1 Russ. 496.

9. Legacy of 100*l.* to the three sisters of A. A. had four sisters. The court will reject the word "three," and give the 100*l.* to the four.

A release by one of the sisters to the other three, does not aid their claim to the legacy under the will.

Gift to B. for life, with remainder to the children of B. living at his decease equally between them. B. died in the lifetime of the testatrix, leaving three children, one of whom afterwards died in the lifetime of the testatrix: *Held*, that there was no lapse of the third part of the legacy by the death of one of the children of B. after him, and before the testatrix, and that the two surviving children were entitled to the whole legacy. *Ib.* 250.

Cases cited: *Viner v. Francis*, 2 Bro. C. C. 658, S. C. 2 Cox, 190; *Allen v. Callow*, 3 Ves. 293; *Doe d. Stewart v. Sheffield*, 13 East, 526; *Shuttleworth v. Greaves*, 4 Myl. & Cr. 35.

10. The testatrix bequeathed "to Mrs. & Miss B.," the widow of the late B., 200*l.* each. At the date of the testamentary instrument there were no persons answering the description. The legacy was claimed by a Mrs. W. (the daughter of the late B.) and her daughter Miss W., (the granddaughter of the late B.): it was proved that the testatrix was intimately acquainted with the late B., and also with Mrs. and Miss W., and used to call them by Mrs. W.'s maiden name of B.: *Held*, that this evidence was admissible, and Mrs. and Miss W. were declared to be entitled to the legacies.

Bequest to "Miss Sarah Jameson." There was no Miss Sarah Jameson. The testatrix was acquainted with Mrs. Sarah Jameson, and her daughter Miss Frances Ann Jameson. Frances Ann Jameson was held to be entitled to the legacy.

Gift by the will of 100*l.* to *Highbury College*; and of another 100*l.* by the second codicil, under a gift of that sum to each of the charities mentioned in the will. In the same codicil was a legacy of 500*l.* to *Hoxton Academy*. The establishment known as *Highbury College* was formerly called *Hoxton Academy*. There was no *Hoxton Academy* at the date of the codicil or subsequently, but other charitable societies had for some time occupied the same premises: *Held*, that the *Highbury College* was not entitled to the legacy of 500*l.* *Lee v. Pain*, 4 Hare, 201.

11. The testator devised his estate to a trustee upon certain uses, and directed him to raise, by sale of the timber and other trees growing thereon, 1,000*l.*, which he bequeathed to the plaintiff, to be paid at his age of 24, without

interest in the meantime; and after giving other pecuniary legacies, the testator bequeathed the residue of his personal estate, subject to the payment of his legacies, debts, funeral, and testamentary expenses, to certain legatees therein named: *Held*, on demurrer by the executor to a bill by the plaintiff to have the legacy of 1,000*l.* raised by sale of the timber, and, if the same should be insufficient, out of the personal estate,—that the legacy of 1,000*l.* was not charged upon the personal estate. *Dickin v. Edwards*, 4 Hare, 273.

Cases cited: *Savile v. Blacket*, 1 P. Wms. 778; *Duke of Ancaster v. Mayer*, 1 Bro. C. C. 454; *Ashburner v. Macguire*, 2 Bro. C. C. 108; *Reade v. Litchfield*, 3 Ves. 474; *Spurway v. Glynn*, 9 Ves. 483; *Hancox v. Abbey*, 11 Ves. 179; *Gillaume v. Adderley*, 15 Ves. 384; *Tower v. Lord Rous*, 18 Ves. 132; *Bootle v. Blundell*, 19 Ves. 495; S. C. 1 Mer. 193; *Rickets v. Ladley*, 3 Russ. 418; *Mann v. Copland*, 2 Madd. 223; *Fowler v. Willoughby*, 2 S. & S. 354; *Campbell v. Graham*, 1 Russ. & Myl. 453; *Rooke v. Worrall*, 11 Sim. 216; *Colville v. Middleton*, 3 Bear. 570; *McClelland v. Shaw*, 2 Sch. & Lef. 538.

12. A legacy of 10,000*l.* consols, "now standing in my name," *held*, from the context of the will, not to be specific.

Testator bequeathed a general legacy of 10,000*l.* consols to A. B. There was no deficiency of assets, but, owing to the institution of a suit for the administration of the testator's estate, the legacy remained unsatisfied for several years after the testator's death, during which consols rose. *Held*, nevertheless, that A. B. was entitled to have the full amount of his legacy purchased and transferred to him. *Author v. Author*, 13 Sim. 422, 439.

Cases cited: *Kirby v. Potter*, 4 Ves. 748; *Barton v. Cooke*, 5 Ves. 461; *Humphreys v. Humphreys*, 2 Cox, 184; *Ashburner v. Macguire*, 2 Bro. C. C. 108; *Kampf v. Jones*, 2 Keen, 756; *Shuttleworth v. Greaves*, 4 M. & Cr. 35; *Partridge v. Partridge*, Ca. temp. Talbot, 226; *Selwood v. Mildmay*, 3 Ves. 306; *Fonnercan v. Poyntz*, 1 Bro. C. C. 472; *Colpoys v. Colpoys*, Jacob, 451; *Attorney-General v. Grote*, 3 Mer. 316; *Boys v. Williams*, 2 Russ. & M. 689; *Druce v. Dennison*, 6 Ves. 385; *Miller v. Travers*, 8 Bing. 244; *Ashton v. Ashton*, Ca. temp. Talbot, 152; *Purse v. Snaplin*, 1 Atk. 414; *Fowler v. Willoughby*, 2 Sim. & S. 354; *Savile v. Blacket*, 1 P. Wms. 777; *Doe v. Cooper*, 1 East, 229; *Crone v. Odell*, 1 Ball & B. 449; *Collison v. Girling*, 4 Myl. & Cr. 63; *Blackshaw v. Rogers*, 2 Bro. C. C. 349.

13. Testator directed his trustees to pay the interest of 2,500*l.* to his daughter for life, for her separate use, and, after her death, for the maintenance of all her children until they should attain twenty-one, and then the principal to be equally divided amongst her said children; and if his daughter should die without leaving a child, then that the principal should be divided amongst all his own children then living. The daughter had children, but they all died under twenty-one. *Held*, nevertheless, that the legacy vested in them. *Parker v. Golding*, 13 Sim. 418.

Cases cited: *Bataford v. Kebbell*, 3 Ves. 363; *Wadley v. North*, ib. 364; *Sainsbury v. Read*, 12 Ves. 75; *Skey v. Barnes*, 3 Mer. 335; *Hanson v. Graham*, 6 Ves. 239; *Lister v. Bradley*, 1 Hare, 10; *Fonnerau v. Fodnerau*, 3 Atk. 645; 1 Ves. 118; *Hoath v. Hoath*, 2 Bro. C. C. 3.

14. Testator bequeathed to his daughter *Eliza* 2,000*l.* for life, the principal to be equally divided among her children, should they attain 21: and to the two children of his late daughter, *Jemima*, 1,000*l.* each, to be paid on their attaining 21. Held, that the legacies to the children were contingent on their attaining 21, and that they were not entitled to interest in the mean time.

Testator left to his daughter *Jane* the sum of 2,000*l.*, to be settled on her when she married, or to be paid to her on her attaining 21: should she die not leaving issue, the 2,000*l.* to fall into the residue of his estate. *Jane* married in her father's lifetime. The court directed the legacy to be settled in trust for her separate use for life; remainder for her children living at her death, according to her appointment; in default of appointment, for her sons at 21, and her daughters at that age or on marriage; remainder for her next of kin; and, if she had no child living at her death, the legacy to become part of the testator's residue. *Young v. Macintosh*, 13 Sim. 445.

Cases cited: *Monteith v. Nicholson*, 2 Keen, 719; *Lang v. Lang*, 10 Sim. 315.

15. Testator gave to the children of his daughter a legacy of 2,000*l.*, to be paid and payable from and out of his manors, messuages, &c., and he subjected and charged the same to and with the payment thereof accordingly. Held, that the legacy was payable out of the testator's real estates only.

Testator, after giving an annuity to his wife, devised his real estates to trustees in trust to pay the annuity thereof, and gave his wife powers of distress and entry on his estates. He then devised his estates in strict settlement, subject, expressly, to the annuity and to the powers of distress and entry. Held, nevertheless, taking the whole of the will together, that the testator's personal estate was primarily liable to pay the annuity. *Roberts v. Roberts*, 13 Sim. 336.

Cases cited: *Duke of Ancaster v. Mayer*, 1 Bro. C. C. 454; *Lord Inchiquin v. French*, 1 Amb. 33; *Samwell v. Wake*, 1 Bro. C. C. 144; *Harewood and Child's case*, ex. tem. Talbot, 304; *Burton v. Knowlton*, 3 Ves. 107; *Bootle v. Blondell*, 1 Mer. 193, and 19 Ves. 494; *Green v. Green*, 4 Mad. 148; *Mitchell v. Mitchell*, 5 Mad. 69; *Driver v. Ferrard*, 1 Russ. & M. 681; *Blount v. Hipkins*, 7 Sim. 43; *Spurway v. Glynn*, 9 Ves. 483; *Hancox v. Abbey*, 11 Ves. 179.

And see *Will*.

#### MERGER.

See *Tenant for Life*, 4.

#### LITEN.

The plaintiffs advanced several sums of

money to S., M., and W., on the security of shipments coming to them as return remittances from their correspondent at Hayti, which shipments they directed the Haytian house to consign to the plaintiffs. The Haytian house was informed of the contracts, and promised the plaintiffs to make the remittances accordingly. In June 1842, a cargo of goods was prepared by the Haytian house as return remittances; and they directed the plaintiffs to insure a part of the cargo on the account of S., and informed W. that a part of the cargo was intended for him, which W. communicated to the plaintiffs. The resident partner in the Haytian house died in June 1842, after the cargo had been shipped, but before it was consigned; and his administratrix consigned the cargo to B. in London, under whose orders it was sold, and by whom the proceeds were received in December 1842. S. & Co., creditors of the Haytian house, on the 29th Aug., 1842, attached by foreign attachment, according to the custom of London, the goods of the Haytian house in B.'s hands. By a letter dated the 7th September, 1842, the surviving partner in the Haytian house directed B. to hold the cargo for S., M., and W., in certain parts. On a bill and motion to restrain the proceedings of S. & Co. against B. in the Lord Mayor's Court, — Held, that the right of the plaintiffs, if any, was an equitable and not a legal right; that the plaintiffs were entitled to the aid of the court in the trial of the right; and that the proceedings in the Lord Mayor's Court should be restrained by injunction. *Cotesworth v. Stephens*, 4 Hare, 185.

Cases cited: *Malcolm v. Scott*, 3 Hare, 39; *Burn v. Carvalho*, 4 Myl. & Cr. 690; *Barker v. Goodair*, 11 Ves. 78; *Williams v. Everett*, 14 East, 582; *Green v. Maitland*, 4 Beav. 524; *Bacon's Abridg.* tit. Custom of London, vol. 2, p. 594.

And see *Vendor and Purchaser*.

#### LIMITATION (STATUTE OF).

See *Tenant for Life*, 2: *Outstanding Term*.

If husband and wife, being seised in fee in right of the wife, convey to a purchaser by deed without fine, the wife, if she survives, and if not her heir, may, on the husband's death, recover the land, notwithstanding the purchaser may have been in possession for more than 40 years. *Jumpsen v. Pitchers*, 13 Sim. 327.

Case cited: *Doe v. Bramston*, 3 Ad. & E. 63.

#### ORDER AND DISPOSITION.

1. Actual notice of the assignment of a policy effected with the Equitable Assurance Society, is necessary to take the policy out of the order and disposition of the assured. *Duncan v. Chamberlayne*, reported 11 Sim. 123, overruled. *Thompson v. Speirs*, 13 Sim. 469.

Cases cited: *Dearle v. Hall*, 3 Russ. 1; *Love-ridge v. Cooper*, ib. 30; *Williams v. Thorpe*, 2 Sim. 257; *Ex parte Tennyson*, Mont. & Bli. 67; *Ex parte Colville*, Mont. 110; *In re Styau*, 2 Mont. D. & De G. 219; 1 Phill. 105; *Ex parte Arkwright*, 3 Mont. D. & De G. 199;

Ex parte Wood, *ib.* 315; Ex parte Price, *ib.* 586; Ex parte Watkins, 2 Mont. & A. 348; Ex parte Henneay, 1 Com. & Lawes, 559; 2 Dru. & War. 555; Smith v. Smith, 2 Cr. & Mees. 231; Edwards v. Scott, 2 Scott, N. R. 266, and 1 Man. & Gr. 962; Gibson v. Overbury, 7 Me. & W. 555; West v. Reid, 13 Sim. 475; Ex parte Williamson, 2 Hare, 249; Porthouse v. Parker, 1 Camp. 82; Moore v. Dunn, 12 Mees. & W. 655; Bignold v. Waterhouse, 1 Mau. & Sel. 255.

2. Notwithstanding a policy of insurance may have been effected with a mutual insurance company, express notice of a deposit of it by way of equitable mortgage, must be given to the company, in order to take it out of the order and disposition of the depositor. *In re Bromley, ex parte Wilkinson*, 13 Sim. 475.

#### PERSONAL ESTATE.

See *Legacy*, 11.

#### PARTNERSHIP.

1. In a suit seeking a partnership account, the defendant denied that any partnership had existed, but admitted that the names of both the alleged partners had been used on the show-board, and otherwise in the business, as if they were partners, but with a view only of introducing the alleged partner into the business on the retirement of the defendant; and the defendant admitted the possession of books, accounts, and documents relating to the business and matters in question, but said that they related exclusively to his own title, and to matters connected with his own property and affairs, in which the alleged partner had no interest, and that they did not relate to any business carried on in partnership, or in conjunction with the alleged partner: *Held*, that the statement in the answer was not sufficient to exclude the title of the plaintiff to the production of the documents mentioned in the schedule. *Harris v. Harris*, 4 Hare, 179.

Cases cited: Smith v. Duke of Beaufort, 1 Hare, 507; Bannatyne v. Leader, 10 Sim. 230, and Adams v. Fisher, 3 Myl. & Cr. 526.

2. A suit respecting a partnership may be maintained without praying a dissolution.

A club was dissolved, and the committee were authorised to realise the assets and wind up the affairs. For that purpose the lease was vested in A. B. and C.—A. and B., without the concurrence of the other members of the committee, sold the lease and property, and received the amount. A. B. and D. (another committee-man) signed the receipt, but A. and B. alone received the amount. In a bill to make A. and B. account, *held*, that C. and D. were not necessary parties. *Richardson, on behalf, &c. v. Hastings*, 7 Beav. 301.

Cases cited: Wallworth v. Holt, 4 Myl. & Cr. 619; Greenwood v. Firth, 2 Hare, 241, note b.; Skev v. Bennett, 2 Y. & C. (N. C.) 405; Aldridge v. Westbrook, 5 Beav. 193.

3. There are two general rules of the court: first, that all persons interested in the subject matter of the litigation ought to be parties; the second, that the court always endeavours

to do complete justice, so that the matters involved in the suit may not be left open to future litigation; but these rules are both occasionally departed from.

As to the necessity of the court's modifying its rules, and adapting its forms of proceedings to the altered circumstances of society existing at the present day.

A bill may be filed respecting a partnership, without praying a dissolution.

In a continuing partnership, a few have an interest in a particular subject adverse to all the rest, a bill may be filed against the few, by and on behalf, &c.

In the case of an insolvent partnership not formally dissolved, a bill may be filed by one or more on behalf of the rest against the governing body, to have the assets collected and applied towards the payment of the debts, without seeking to ascertain the rights and liabilities of the parties as between themselves, but leaving them open to future litigation.

By the rules of a club, the bankers were alone authorised to receive money on account of the club. Some of the members subscribed and purchased the furniture, which by deed executed by the subscribers was vested in the plaintiff A. B., in trust to pay the amount subscribed, and to pay the surplus to the committee for the benefit of the club. The club became embarrassed, was afterwards dissolved, and the committee were authorised to wind up the affairs. Two of the committee, C. and D., sold the furniture and alone received the produce, together with other general assets of the club. A bill was filed by A. B., on behalf, &c., against C. and D. and E., a non-subscribing member, to recover the monies in the hands of C. and D., and praying that the furniture money might be paid to the plaintiff, on the trusts of the deed, "or otherwise as the court might direct," and that the general assets recovered might be paid to the bankers, or otherwise, &c.: *Held*, that the bill was not defective for want of parties, and that neither the other parties to the deed, nor the other members of the club, were necessary parties. *Richardson v. Hastings*, 7 Beav. 323.

Cases cited: Newton v. Lord Egmont, 4 Sim. 574; Harrison v. Stewardson, 2 Hare, 530; Hichens v. Congreve, 4 Russ. 562; Holmes v. Henty, 4 Cl. & Fin. 99; Wallworth v. Holt, 4 Myl. & Cr. 619; Weld v. Bonham, 2 S. & St. 91; Francis v. Francis, 3 Ves. 75; Angier v. Stannard, 3 Myl. & K. 566; Saville v. Tankred, 1 Ves. sen. 101; — v. Walford, 4 Russ. 572; Richardson v. Larpent, 2 Y. & C. (N. C.) 507; Calverly v. Phelps, 6 Mad. 229; Mare v. Malachy, 1 Myl. & Cr. 579; Taylor v. Salmon, 4 Myl. & Cr. 141; Wallworth v. Holt, 4 Myl. & Cr. 635; Evans v. Stokes, 1 Keen, 24; Formay v. Homfray, 2 Ves. & B. 329; Harrison v. Armitage, 4 Mad. 143; Marshall v. Colman, 2 Jac. & W. 266; Richards v. Davies, 2 Russ. & Myl. 347; Loscombe v. Russell, 4 Sim. 8; Kuebell v. White, 2 Y. & Col. (Exch.) 15; Bentley v. Bates, 4 Y. & Col. (Exch.) 182; Miles v. Thomas, 9 Sim. 609; Fairborne v. Weston, 3 Hare, 387; Crawshaw v. Collins, 13 Ves. 226.

4. One member of a club, on behalf of himself and the rest, sued two other members, to recover back monies belonging to the club. It having been determined that the other individual members were not necessary parties: *Held*, that the defendants could not resist the production of documents in their possession, on the ground that the other members had an interest in them.

A plaintiff ought not to use, for any collateral purpose, documents ordered by the court to be produced for the purposes of the suit. *Richardson v. Hastings*, 7 Beav. 354.

**Cases cited:** See 7 Beav. 301, 323; *Murray v. Walter*, Cr. & Ph. 114; *Lopez v. Deacon*, 6 Beav. 254; *Taylor v. Rundell*, Cr. & Ph. 111; *Few v. Guppy*, Hare on Discovery, 124; *Wigram on Discovery*, 245.

And see *Probate Duty*.

#### POWER OF APPOINTMENT.

1. Power to appoint an annuity held, under the circumstances, to authorise the appointment of the principal sum invested in the funds for securing it.

A testator bequeathed an annuity of 500*l.* a-year to his daughter for life, and directed an investment in the funds for securing it; and, after her decease, he directed the "annuity" should go as his daughter should by will appoint, and in default, the "annuity" should be applied towards the maintenance of her children till 21, and then the "principal sum" to the children, with a gift over "of the said principal sum of money." *Held*, that the daughter had the power of appointing the principal sum. *Samuda v. Lonsdale*, 7 Beav. 243.

**Cases cited:** *Page v. Leapingwell*, 18 Ves. 463; *Haig v. Swiney*, 1 Sim. & St. 487; *Blewett v. Roberts*, Cr. & Ph. 374.

2. *A.* had power to appoint a fund amongst all the children of *B.*, begotten and to be begotten, and their issue, and, in default of appointment, the fund was given to the children equally. *B.* had only six children, all of whom were living when the power was created. *A.* directed by his will that the share which every child of *B.*, begotten or to be begotten, was entitled to in default of appointment, should be held in trust for that child for life, and, after its death, for its children. *Held*, that the appointment was not void for remoteness. *Griffith v. Pownall*, 13 Sim. 393.

**Cases cited:** *Routledge v. Dorril*, 2 Ves. jun. 357; *Arnold v. Congreve*, 1 Russ. & M. 209.

#### REMAINDER.

See *Tenant for Life*.

#### REMOVEDNESS.

See *Power of Appointment*, 2.

#### SALE.

See *Vendor and Purchaser*.

#### SURVIVORSHIP.

See *Will*.

#### PROBATE DUTY.

The share of a deceased partner in the freehold and copyhold estates of the partnership is not personal estate for the purpose of being included in the value or amount, in respect of which probate duty is payable. *Custance v. Bradshaw*, 4 Hare, 315.

**Cases cited:** *Attorney-General v. Hope*, 1 Cro. Mees. & Ros. 530; *Williams v. Sangar*, 10 East, 66; *Denn d. Manifold v. Diamond*, 4 B. & C. 243; *Bradling v. Barrington*, 5 B. & C. 467, 475; *Rex v. Inhabitants of Barham*, 8 B. & C. 99, 104; *Cockburn v. Harvey*, 2 B. & Adol. 797; *Drake v. The Attorney-General*, 10 Clark & Fin. 257; *Platt v. Routh*, 6 Mees. & Wels. 791; *Marriott v. Marriott*, Gibb. Eq. rep. 206; *Lyndwood's Provinciale Lib. iii.*, tit. 13, p. 171, de Testamentis; *Portman v. Willis*, Cro. Elis. 386; *Walker v. Deane*, 2 Ves. jun. 170, 185; *Taylor v. Haygarth*, V. C. England, H. T. 1844; *Barker v. May*, 9 B. & C. 489; *Randall v. Randall*, 7 Sim. 271; *Phillips v. Phillips*, 1 My. & K. 649; *Townshend v. Devaynes*, 1 Montagu on Partnership, app. 96, 100, note 2 A.; *Attorney-General v. Dimond*, 1 Cro. & Jer. 356; *Attorney-General v. Hope*, 8 Bligh. N. R. 44; S. C., 1 Cro. Mees. & Ros. 530; *Bourne v. Bourne*, 2 Hare, 35; *Matson v. Swift*, M. R. 28 May, 1845.

#### TENANT FOR LIFE.

1. A testator charged annuities exclusively on his real estate, the legal estate of which he devised to trustees, upon trust to pay the rents to, or permit the same to be received by one for life, with remainders over. On the testator's death, the tenant for life took possession of the estate and title-deeds, and he kept down the annuities, but cut some timber. The trustees acquiesced for four years, but afterwards proceeded by action to recover the deeds and to receive the rents. The court, by motion, restrained the proceedings, on the tenant for life undertaking to keep down the annuities, not to grant leases or cut timber without the consent of the trustees, and bringing the deeds into court.

Where the testator delivers the legal estate to trustees, and gives to a tenant for life an equitable estate only, with remainders over, such tenant for life ought not to cut timber without the consent of the trustees. *Denton v. Denton*, 7 Beav. 388.

**Cases cited:** *Evans v. Bicknell*, 6 Ves. 173; *Jenkins v. Milford*, 1 Jac. & W. 629; *Doe d. Lloyd v. Passingham*, 6 Barn. & Cr. 305.

2. A tenant for life, by his will and under a power, charged the settled estates with 25,000*l.* for the portions of his younger children, to be raised by means of a term vested in trustees, payable at 21, and to sink into the inheritance if a younger son should become an elder, or die without issue before the day of payment.—Subject in the first place, to the sums therein-after charged thereon by his will, he devised his fee simple estate to his eldest son for life, with remainders over. He then "gave and bequeathed" an additional 25,000*l.* amongst his younger children "which several portions" were to be in augmentation of the "portions"

already appointed, to be raised and paid to his said sons and daughters respectively, at such times, and under such conditions, and subject to such contingencies, and with such interest, as he had before directed and appointed their original portions by that his will. And he thereby charged his fee simple estates therein before by him devised to his eldest son, with the raising and paying the said "*portions*" and sums of money to his said sons and daughters respectively, at the times and in the manner aforesaid; and after giving certain pecuniary legacies, he gave the residue of his personal estate, after payment of his debts and legacies aforesaid, to his eldest son; and he provided, that if the personal estate should not extend to pay such of his debts as should not be charged on his real estate and his said legacies, then he charged his fee simple estates to make good the deficiency, and he empowered his trustees to raise thereout, not only the sums therein before charged on the said premises for his younger children and such and such deficiency, but all other sums necessary for the purposes of his will. *Held*, that the additional portions given to the younger children were a primary, if not an exclusive charge upon the testator's fee simple estates, devised to his eldest son for life.

If a tenant for life pays off a charge upon the inheritance, he is *prima facie* entitled to that charge for his own benefit; but he may, if he think proper, exonerate the estate. In the absence of evidence, the presumption is, that he pays the charge for his own benefit, and not for the benefit of the persons entitled in remainder; but evidence may show the contrary conclusion to be true.

A tenant for life paying off a charge upon the estate, and in the same transaction merging the security, by taking an assignment connecting it with the legal estate of inheritance, *prima facie* puts an end to the charge; but something is required to manifest an intention to exonerate the inheritance. A single payment of the charge, without more, is sufficient to establish the right of the tenant for life to have the charge raised out of the estate. He has no obligation or duty to make a declaration, or do any act demonstrating his intention; the burden of proof is upon those who allege that in paying off the charge, he intended to exonerate the estate.

A. B., being tenant for life of the testator's real estates, subject to a charge of 25,000*l.* and absolutely entitled to the residuary personal estate, paid off the charge and obtained the releases. At the time he seemed to have conceived that, as residuary legatee, he was liable to pay the amount out of the personal estate, which was sufficient for that purpose. Nothing was done to keep the charge on foot. After the death of the tenant for life, it being determined that the 25,000*l.* was a primary charge upon the real estate: *Held*, that it still subsisted as a charge on the settled estates, for the benefit of the personal representatives of the tenant for life.

In 1773, a tenant for life paid off a charge of 25,000*l.* affecting the settled estates. He died in 1837, having in the mean time taken no steps for keeping the charge alive. *Held*, that notwithstanding more than 20 years had elapsed, and that there had been no part payment or acknowledgment, the charge still existed in favour of his representatives, and had not been defeated by the Statute of Limitations, (3 & 4 W. 4, c. 27, s. 40.) *Held*, also, that the statute cannot be applied to a case where there is no assignable person liable to pay the charge, no person who, by the delay, could be induced to suppose that the charge was abandoned or merged, and where the rent, out of which the interest ought to be paid, is receivable by and belongs to the same person who is entitled to the interest.

Principles on which this court assumes that a tenant for life, who is also the owner of a charge on the inheritance, has duly discharged his duty of keeping down the interest on the charge. *Burrell v. Lord Egremont*, 7 Beav. 205.

Cases cited: *Crowder v. Clowes*, 2 Ves. jun. 449; *Day v. Croft*, 4 Beav. 561, and the cases there referred to; *Reade v. Litchfield*, 3 Ves. 474; *Bootle v. Blundell*, 19 Ves. 516; *Kirke v. Kirke*, 4 Russ. 435; *Skippertheon v. Tower*, 1 You. & Col. (C.C.) 441; *Williams v. The Bishop of Landaff*, 1 Cox, 254; *Jones v. Bruce*, 11 Sim. 221; *Forbes v. Moffatt*, 18 Ves. 384; *Drinkwater v. Combe*, 2 Sim. & St. 340; *Trevor v. Trevor*, 2 Myl. & K. 675; *Earl of Buckingham v. Hobart*, 3 Swan, 186; *Corbett v. Barker*, 1 Anst. 138, reversed 3 Anst. 755; *Ashton v. Milner*, 6 Sim. 369; *Raffety v. King*, 1 Keen, 601; *Brocklehurst v. Jessop*, 7 Sim. 438; *Brooksbank v. Smith*, 2 You. & Col. (Exch.) 58; *Denys v. Shuckburgh*, 4 You. & Col. (Exch.) 42; *Fereyes v. Robertson*, Bumb. 301, and *Dolman v. Smith*, Prec. Ch. 456; *The Duke of Ancester v. Mayer*, 1 Bro. C. C. 462; *Brummell v. Prothero*, 3 Ves. 113; *Bootle v. Blundell*, 1 Mer. 219; *Inchiquin v. French*, Amb. 37; *Samwell v. Wake*, 1 Bro. C. C. 145; *Tower v. Lord Rous*, 18 Ves. 138; *McClelland v. Shaw*, 2 Sch. & Lef. 544; *Webb v. Jones*, 2 Bro. C. C. 60; *Jones v. Morgan*, 1 Bro. C. C. 218; *Corbett v. Barker*, 1 Anst. 138, reversed, 3 Aust. 755; *Raffety v. King*, 1 Keen, 601; *St. Paul v. Viscount Dudley and Ward*, 15 Ves. 167.

#### TIMBER.

See *Tenant for Life*, 1.

#### TITHES.

The act for tithes in London (37 Henry 8, c. 12) provided that the inhabitants of London should pay 2*s.* 9*d.* in the pound for tithe upon the rent reserved; or if a less rent was reserved by reason of any fine, or if the owners were also occupiers, then the tithe to be paid at the same rate upon the rent at which the premises were last letten for, without fraud or coven.

A house and premises in London were let for a term of 60 years, at a reserved rent (in-

cluding insurance) of 102l. 10s., in consideration of the lessor laying out 2,000l. in building thereon. The improved annual value of the property, after the building was completed, was 250l. :—

*Held*, that under the statute the tithe was to be paid at 2s. 9d. in the pound, not on the reserved rent alone, but on the full annual value of 250l. *Vivian v. Cochrane*, 4 Hare, 167.

Cases cited : *Dunn v. Burrell*, 1 Gwil. 299, S. C.; 1 Ea. & You. 270; *The Warden and Minor Canons of St. Paul's v. Crickett*, 2 Ves. jun. 563; 5 Price, 14; *The Warden and Minor Canons of St. Paul's v. The Dean of St. Paul's*, 4 Price, 65; *Ivatt v. Warren*, 3 Gwil. 1054; *Williamson v. Goseling*, id. 902; *Antrobus v. The East India Company*, 13 Ves. 9; *Ward v. Hilder*, 2 Gwil. 538, S. C.; 1 Ea. You. 576; *Kynaston v. The East India Company*, 3 Swanst. 263; per Lord Eldon, see 4 Price 84, n.; *The Warden and Minor Canons of St. Paul's v. Morris*, 9 Ves. 155; *The Warden and Minor Canons of St. Paul's v. Kettle*, 2 Ves. & Rea. 1; *Green v. Piper*, Cro. Eliz. 276; *Skidmore v. Bell*, 2 Inst. 659; *Sheffield v. Pierce*, 2 Gwil. 503; *Grant v. Cameron*, id. 541; *Sayer v. Mumford*, id. 546; *Branston v. Heron*, 4 Gwil. 1314; *Dem. d. Mansford v. Diamond*, 4 B. & C. 243; *The King v. The Inhabitants of Barham*, 8 B. & C. 99; *Cockburn v. Harvey*, 2 B. & Ad. 797.

#### TRUST.

1. The tenant for life of an estate, who was also devisee in trust in remainder for the children of the testator, with a power of appointment by will amongst them, purchased and obtained from the objects of the power, a release of their reversion at an undervalue, and devised the estate to her son in fee charged with debts and legacies. The son took possession of the estate, and paid off the legacies and charges. Fourteen years and a half, after the death of the tenant for life, and 17 years after the purchase of the reversion, the assignee of one of the vendors, an object of the power, who had become insolvent, filed his bill to set aside the sale : *Held*, that the lapse of time was a bar to the relief; and that the mere circumstance of the poverty of the *cestui que trust* was not sufficient to excuse the delay. *Seemle*, that the time which might elapse after such a transaction, during the life of the tenant for life, who was the donee of the power, would not alone be considered as amounting to laches.

Bill by one of the several *cestui que trusts* against the devisee of the trustee to set aside the sale of an estate, which was made to the trustee by all the *cestui que trusts* for one sum, and conveyed by one instrument : *Held*, that all the *cestui que trusts* were necessary parties to the suit. *Roberts v. Tunstall*, 4 Hare, 257.

Cases cited : *Drummond v. Duke of St. Albans*, 5 Ves. 433; *Campbell v. Walker*, id. 680; *Price v. Byrn*, id. 680 n.; *Pulteney v. Warren*, 6 Ves. 72; *Pettward v. Prescott*, 7 Ves. 541; *Gregory v. Gregory*, Coop. 201, S. C., Jac. 631; *Champion v. Rigby*, 1 Russ. & Myl. 559 S. C., Tam. 421; *Roche v. O'Brien*,

1 Ba. & Beat. 350; *Wood v. Downes*, 18 Ves. 120; *Edwards v. Meyrick*, 2 Hare, 60.

2. An unmarried lady transferred a sum of stock to trustees for herself. The letter supposed to contain the terms of the trust was lost, and no evidence was given of its contents. After the marriage of the lady, the husband and wife demanded a transfer of the fund, which the trustee refused to make without the direction of the court, unless the fund should be settled for the benefit of the wife and her issue : *Held*, that the trustees ought to have transferred the fund, without suit, and must therefore pay the costs. *Penfold v. Bouch*, 4 Hare, 271.

Cases cited : *Jones v. Lewis*, 1 Cox, 199; *Angier v. Stannard*, 3 Myl. & K. 566; *Thorby v. Yeats*, 1 Yo. & C. C. 438; *Willis v. Hixcox*, 4 Myl. & Cr. 197.

And see *Husband and Wife*.

3. A case of breach of trust was alleged on the pleadings against trustees and executors for not having sold an estate, but at the first hearing the common accounts only were directed. *Held*, on further directions, that the defendants could not be then charged with the breach of trust, and that inquiries could not be then directed with that object. *Green v. Badley*, 7 Beav. 274.

See *Garland v. Littlewood*, 1 Beav. 527.

4. An order of reference to inquire whether the heir of the mortgagee was a trustee within the act of 1 W. 4, c. 60, and 1 & 2 Vict. c. 69, was made on the petition of the executors of the mortgagee, and the mortgage-debt being paid off pending the reference, the master found that the heir was not a trustee for the petitioners, but for the mortgagor, whereupon the court allowed the petition to be amended, and made the petition of the mortgagor, and then directed the reconveyance. *In re Mansfield*, 4 Hare, 308.

5. Where the master finds, that in a certain construction of a devise, the infant therein named is a trustee within the act 1 Will. 4, c. 60, but that on a different construction, another person would be such trustee, the court may declare the infant to be the trustee, and make the order for conveyance without sending it back to the master.

A general residuary devise and bequest of real and personal property, for such estate and interest as the testator had therein; the personal estate to be subject to the testator's debts : *Held*, to pass the legal estate in real property, of which the testator was merely trustee; the will creating no inconsistent trust thereof. *Langford v. Anger*, 4 Hare, 313.

6. Where trust money appears to have been invested on an improper security, it will, on motion, be ordered to be brought into court within a given time; but if the case be proper, the period will be extended from time to time, to enable the defendant to realise the security.

Where part of a residuary estate has been invested on an improper security, and the defendant has an interest therein, the court, on being satisfied that there is no existing claim on the estate, sometimes confines the amount



to be paid into court to the share of the plaintiff.

An intestate died in 1826, leaving a widow and two infant children. The widow administered, and in 1840 executed a deed which stated, that the assets actually realised amounted to 4,000*l.* of which she had appropriated to herself 700*l.*, and that the remainder had been invested on mortgages which were specified. In her answer to a bill filed by one of the children in 1843, she stated that this was wholly erroneous, that the residue amounted to 1,600*l.* only, and that the plaintiff had received 390*l.* on account of her one-third. The answer stated, that the debts had been paid, but the statements were most unsatisfactory. A sum of 700*l.* appeared to have been lent on an improper security. The court, on motion, ordered *the whole 700*l.* to be brought into court. Score v. Ford, 7 Beav. 333.*

Cases cited: *Vigraas v. Binfield*, 3 Mad. 62; *Collis v. Collis*, 2 Sim. 365; *Wyatt v. Sharratt*, 3 Beav. 498; *Meyer v. Montrion*, 4 Beav. 345; *Rogers v. Rogers*, 1 Anst. 174.

7. A trustee was declared liable for a breach of trust, and was ordered to pay the costs up to the hearing. He complied with the decree. *Held*, that he was entitled to his costs of the subsequent proceedings for clearing and distributing the fund. *Hewett v. Foster, 7 Beav. 348.*

Cases cited: 6 Beav. 259; *Pride v. Fooks, 2 Beav. 430.*

8. Where a trustee neglects to invest on real or good securities according to the trust, the *cestui que trust* has the right of selecting whether the trustee shall be answerable for the money.

An executor and trustee directed to invest a legacy on mortgage, may properly appropriate one of the testator's mortgages in payment of the legacy, but he must ascertain its sufficiency.

A trustee having the option of investing on mortgage or government security, improperly took an insufficient mortgage security. Being held answerable, the court decided, that having exercised his discretion, though improperly, he was answerable for the money lost, and not for the stock it might have produced. *Ames v. Parkinson, 7 Beav. 379.*

Cases cited: *Stuckney v. Sewell*, 1 Myl. & Cr. 8; *Watts v. Girdlestone*, 6 Beav. 188; *Buxton v. Buxton*, 1 Myl. & Cr. 96; *March v. Hunter*, 6 Mad. 295; *Hall v. Hallett*, 1 Cox. 134; *Horkby v. Bartock*, 1 Russ. 141; and see *O'Brien v. O'Brien*, 1 Molloy, 533; *Kellaway v. Johnson*, 5 Beav. 319; *Shepherd v. Moulds*, V. C. Wigram, 7th June, 1845.

9. Special directions given in a decree for an account, that if the master should be unable to take such account, by reason of the non-production of the books of account or other circumstances, he should ascertain and state such circumstances, and report thereon.

Difficulties in making decrees against parties depending on the result of the accounts, which could not be satisfactorily taken, in consequence of the loss of the books of accounts.

Executors having for about three years paid interest on the plaintiff's legacies, the court, at first hearing, directed accounts, with a view of determining from the state of the assets, the liabilities of the executors to pay the legacies. The court, on further directions, refused to hold, that by payment of interest the executors had admitted assets, such a conclusion being totally at variance with all that had been previously done in the suit.

In 1825, the testator and his son Henry E., who had previously carried on business as brewers, admitted another son, George, into partnership. By the partnership deed, it was agreed, that the plant, &c., which it was stated had been valued at 63,600*l.*, exclusive of the stock and debts, should be the capital, of which the testator was to be entitled to a moiety. The testator's surplus monies in the business were represented to amount to 48,915*l.*, on which the testator was to receive interest. The testator died in 1826, having, by his will, given his surplus capital to his executors, in trust, to invest on security, and pay the income to his wife, and after her death, to set apart two legacies of 12,000*l.* each for his daughters and their children; and he gave his interest in the business, and the stipulated ordinary capital, to his sons, Henry E., George, and William, who was a minor; and he directed and required his executors to carry on the business, in conjunction with his sons, until the youngest attained twenty-one; and he empowered them to sell the brewery during William's minority. He charged his freehold and other property with the payment of his surplus capital, and directed mortgages of his real estate for securing the legacies. The will was not proved till December 1827; but, after the testator's death, the executors left the surviving partners in the undisturbed possession of the partnership property; and though they did not take any active part, the business was carried on with their concurrence. Disputes arose between the surviving partners, and a suit for administration was instituted, which, through the interference of the executors, was abandoned. In January 1828, the executors joined in a deed, whereby the partnership was dissolved, and Henry E. assigned his interest to George, in consideration of 20,000*l.*, and the executors released Henry E. from all claims in respect of any surplus capital. The business was afterwards sold, with the sanction of the court, and in March 1830 was found to be insolvent, and the partnership property turned out to be wholly unproductive to the testator's estate. In January 1831 a bill was filed by infants interested in the two legacies, seeking to charge the executors with wilful default in not having obtained payment of the legacies out of the surplus capital. By several decretal orders, accounts were directed to be taken as to the accuracy of the recitals in the partnership deed, the value of the plant, &c., and the surplus money due to the testator at his death, and accounts of the partnership dealings and transactions; and if he should find that he was unable to take

such accounts, by reason of the non-production of books of accounts, he was to state the circumstances. He was also directed to inquire by whom the partnership property was possessed at the death of the testator, and how disposed of, and whether the executors, with due diligence, and without their wilful default, might have possessed themselves, out of the partnership money, of sufficient to pay the two legacies of 12,000*l*. The master was unable to take the accounts, by reason of the non-production of the books. He found, however, on the imperfect evidence before him, large sums due to the testator, and large partnership assets, which however varied in each of his three reports:—he also found that the executors might, with due diligence, &c., have possessed themselves, out of the partnership property, of sufficient to pay the two legacies. The court, however, was of opinion, that there was no reason for thinking that the testator's surplus capital could, if at all, have been realised without putting an end to the business, which the executors were not bound to do. That though the executors had not fully or properly performed their duty, still it was more a matter of conjecture than of proof what the assets and liabilities were, and the results were not accurate, or approaching to accuracy; and that it had not been satisfactorily made out, either that there were partnership assets, out of which the legacies could have been recovered or secured, nor that the assets were such as to make it impracticable for the executors to obtain the payment of the legacies. The court, in this state of things, declined to charge the executors. *Rowley v. Adams*, 7 Beav. 395.

Cases cited: *Turner v. Corney*, 5 Beav. 515; 4 Myl. & Cr. 554

And see *Executors*.

#### OUTSTANDING TERM.

In 1807, a tenant for life of freehold estates, subject to long outstanding terms, granted a personal annuity to the plaintiffs, secured by warrant of attorney, in which judgment was forthwith entered up and docketed. Afterwards, in 1818 and 1819, he created other incumbrances, two of which were by demises of the estate. The plaintiff did not sue out any *elegit* till 1822, when he did so. The inquisition being duly returned, he commenced an action of ejectment, which he discontinued, in consequence of the outstanding terms. In a suit to which the plaintiff was no party, the priorities of the other incumbrances were declared. The plaintiff, within twenty years from the last payment of the annuity, filed this bill against all the other parties, to have it declared that he was entitled to stand as first incumbrancer; that the decree, &c. might be altered, or that the plaintiff might be at liberty to proceed at law, and that the defendants might be restrained from setting up the terms. One of the defences was, that the plaintiff's annuity was usurious. The court held, that the plaintiff was not barred by the proceedings in the suit, and retained the bill for a year, giving

the plaintiff leave to bring an action for the recovery of the freehold, and restraining the defendants from setting up the terms; and also, (though not specifically asked by the bill,) from setting up the statute of limitations. The court also refused to interfere with the application of the rents in the meantime, and to grant inquiries as to the validity of the plaintiff's charge, holding that *prima facie* credit was to be given to the judgment, and that if the defendants had any equitable case to make against the judgment, they ought to adopt proceedings of their own to establish that case.

In a suit in which the priorities of different incumbrancers on an estate were determined, a receiver had been appointed. *A. B.*, who claimed to be first incumbrancer, not having been made a party to that suit, filed a bill of his own to establish his right: *Held*, that the receiver was not a necessary party, and but for the decision *Lewis v. Lord Zouche*, 2 Simons, 388, he would have been considered an improper party. *Smith v. Earl of Effingham*, 7 Beav. 357.

Cases cited: *Maddox v. Maddox*, 1 Ves. sen. 60; *Hargrave v. Rothwell*, 1 Keen, 154; *Fuller v. Bennett*, 2 Hare, 394; *Tunstall v. Trappes*, 3 Sim. 286; *Morris v. Jones*, 2 Barn. & Cres. 232; *Hiscock v. Kemp*, 3 Adol. & Ellis, 676; *Morgan v. Burgess*, 1 Dowl. Prac. Ca. 850 N.S.; *Neate v. Duke of Marlborough*, 3 Myl. & Craig, 407; *Lord Dillon v. Plaskett*, 2 Bligh, 239, N.S.; *Lewis v. Lord Zouche*, 2 Sim. 388; *Townshend v. Askew*, 3 Myl. & Cr. 410, note b.; *Stileman v. Ashdown*, 2 Atk. 477; *Champion v. Rigby*, 1 Russ. & My. 539; *Tamlyn*, 421, affirmed by Lord Cottenham, 20th March, 1840; *Gregory v. Gregory*, Coop. 201, Jac. 631; *Smith v. Lord Effingham*, 2 Bea. 232; *Simmons v. Pettit*, V. C. E. 19th Feb. 1844; *Ramsbottom v. Buckhurst*, 2 Mau. & Sel. 563; *Neate v. Duke of Marlborough*, 3 Myl. & Cr. 407; *Sharp v. Key*, 8 Mees. & Wels. 379; *West v. Skip*, 1 Ves. sen. 244; *Hamilton v. Houghton*, 2 Bligh (O. S.) 169; *Foster v. Blackstone*, 1 Myl. & Keen, 297; *Davis v. Lord Strathmore*, 16 Ves. 419; *Whitworth v. Gangain*, Cr. & Ph. 325; *Aston v. Lord Exeter*, 6 Ves. 289; *Baker v. Harwood*, 7 Sim. 373; *Beer v. Ward*, Jac. 194; *Hylton v. Morgan*, 6 Ves. 293; *Curtis v. Curtis*, 2 Bro. C. C. 619; *Stonehewer v. Thompson*, 2 Atk. 440; *Lewis v. Lord Zouche*, 2 Sim. 388. [Note.—An appeal to the Lord Chancellor is pending.]

#### VENDOR AND PURCHASER.

1. Where, on the same motion, the purchaser asks to pay his purchase money into court, and be let into possession, it is also asked that one purchaser may be substituted for another, upon the affidavit of no underhand bargain, no additional costs are incurred by the parties to the cause, and costs are not ordered to be paid by the purchasers. *Christian v. Chambers*, 4 Hare, 307.

2. A purchaser, attending the sale of an estate in the cause, heard the amount of the reserved bidding announced before he made his offer; and the master made a separate report, allowing him as the purchaser, subject to

the approval of the court, with reference to that fact. The mode of confirming this report and approving of the purchase is by a special notice of motion to that effect, and not, as in the common case, by orders nisi and absolute. *Dowle v. Lucy*, 4 Hare, 311.

3. *A.* agreed to sell an estate to *B.* for an annuity, and *B.* was to pay off a mortgage to which the estate was subject. Accordingly, *B.* executed a deed, by which he granted the annuity to *A.* and covenanted to pay it: and by a conveyance of even date, but executed after the annuity deed, after reciting the agreement and the annuity deed, *A.*, and the mortgagee, in pursuance of the agreement, and in consideration of the annuity having been so granted as aforesaid, and of the payment of the mortgage money, conveyed the estate to *B.* The annuity, afterwards, became in arrear: *Held*, that *A.* had no lien on the estate for the annuity. *Buckland v. Pocknell*, 13 Sim. 406.

Cases cited: *Clarke v. Royle*, 3 Sim. 499; *Winter v. Anson*, 3 Russ. 488; *Tardiff v. Scrughan*, 1 Bro. C. C. 423; *Mackreth v. Symmons*, 15 Ves. 349; *Parrott v. Sweetland*, 8 Myl. & K. 655.

And see *Trustee*.

#### WILL.

1. *Construction*.—Testator bequeathed the portrait of himself, of his grandfather and grandmother, of his mother, and of the Duke of Schomberg, to *A. B.* The testator had one portrait of himself, one of his grandfather and grandmother, and one of his mother, and a three-quarters portrait and a portrait in crayons of the Duke of Schomberg, and also a picture in which the duke was represented on horseback, with a battle in the distance. *Held*, that that picture was a portrait of the duke, and that it passed, together with all the other portraits, by the bequest. *The Duke of Leeds v. Lord Amherst*, 13 Sim. 459.

2. A testator having three-and-a-half per cents. East India stock, Danish bonds, and other property, bequeathed to his wife, during her widowhood, the interest of all the money he had or might possess in the funds or other securities:—"And I further bequeath, to my wife, the interest of any other property I do or may possess, to be enjoyed by her so long as she remains single." *Held*, that the testator's widow was entitled, as against the residuary legatees, to enjoy, *in specie*, every portion of her husband's property which came within the description of money in the funds or other property, and consequently his three-and-a-half per cents., East India stock and Spanish bonds. *Oakes v. Strachey*, 13 Sim. 414.

Cases cited: *Mills v. Mills*, 7 Sim. 501; *Alcock v. Sloper*, 2 Myl. & K. 699; *Bonn v. Dixon*, 10 Sim. 636; *Lichfield v. Baker*, 2 Beav. 481.

3. Testator bequeathed his residue to trustees, in trust for *J. F.* for life, and, after her death, for her children; but in case *J. F.* should survive her mother, and die without having had lawful issue, then in trust for the brothers and sisters of *J. C.* But in case *J. F.*

should die in the lifetime of her mother, without lawful issue, then the testator directed the trustees to retain, out of the residue, sufficient to produce 150*l.* a-year, and to pay the annual produce to the mother for life; and after her decease, he gave the principal so to be retained, to the person or persons who would be entitled thereto in case *J. F.* had survived her mother and died without lawful issue. *J. F.* died without issue in her mother's lifetime. *Held*, that the whole of the residue, except the fund for paying the annuity, was undisposed of. *Clark v. Butler*, 13 Sim. 401.

Cases cited: *East v. Cook*, 2 Ves. 30; *Pearsall v. Simpson*, 15 Ves. 23; *Mackinson v. Sewell*, 5 Sim. 78.

4. Testator devised all his real estates to trustees: as to his freehold messuage, farm, lands, and hereditaments, in the county of *B.*, in trust for *C.* The testator had a farm in that county, consisting of a messuage and 116 acres of land, of which the messuage and the greater part of the land were freehold, and the other parts leasehold for long terms of years at peppercorn rents, and they were interspersed with and undistinguishable from the freehold part, and had been demised therewith as one farm, at one entire rent, and the testator had always treated and dealt with them as freehold. *Held*, nevertheless, that the leasehold parts were not comprised in the trust. *Stone v. Greening*, 13 Sim. 390.

Cases cited: *Thompson v. Lawley*, 2 Bos. & P. 303; *Hobson v. Blackburn*, 1 Myl. & K. 571; *Day v. Trig*, 1 P. Wms. 286; *Lane v. Stanhope*, 6 T. R. 345; *Arkell v. Fletcher*, 10 Sim. 299; *Parker v. Marchant*, 5 Man. & Gr. 498; 2 Y. & C., N. C. 279.

5. Testatrix bequeathed a leasehold house and 3,000*l.* stock to trustees, in trust to permit her daughter to receive the rents and interest for life, for her separate use; and from and immediately after her daughter's decease, she gave the rents and interest to the heirs of the body of her daughter lawfully begotten: but in case her daughter should happen to die without leaving any lawful issue living at the time of her decease, she gave the house and the stock over. *Held*, that the daughter took the property absolutely. *The Earl of Verulam v. Bathurst*, 13 Sim. 374.

Cases cited: *Denn v. Shenton*, Cowp. 410; *Wright v. Pearson*, 1 Eden. 119; *Jesson v. Wright*, 2 Bli. 1; *Doe v. Nicholls*, 1 B. & C. 336; *Garth v. Baldwin*, 2 Ves. 646; *Hodgeson v. Passey*, 2 Atk. 89; *Dafferne v. Goodman*, 2 Vern. 362; *Peacock v. Spooner*, ib. 43; *Ward v. Bradley*, ib. 22; *Webb v. Webb*, 1 P. Wms. 132; *Butterfield v. Butterfield*, 1 Ves. 133; *Thesbridge v. Kilburne*, 2 Ves. 233; *Price v. Price*, ib. 234; *Wright v. Atkyns*, 19 Ves. 299; *Tothill v. Pitt*, 1 Madd. 488; *Read v. Snell*, 2 Atk. 642; *Lamplsey v. Blower*, 3 Atk. 396; *Jacobs v. Amyatt*, 4 Bro. C. C. 542; 1 Mad. 376; 13 Ves. 479; *Knight v. Ellis*, 2 Bro. C. C. 570; *Trotter v. Oswald*, 1 Cox, 317; *Ex parte Sterne*, 6 Ves. 156; *Stoner v. Curwen*, 5 Sim. 264; *Chandless v. Price*, 3 Ves. 99; *Cross v. Cross*, 7

Sim. 201; Broucher v. Bagot, 1 Mer. 271; Roberts v. Dixwell, 1 Atk. 607; Doe v. Edlin, 4 A & E. 582; Paine v. Stratton, 2 Atk. 647.

6. Devise to trustees in fee, upon trust to demise until the testator's youngest child attained twenty-one, and during the minority of such youngest child, to pay the rents to the testator's wife, for the maintenance of herself and children, and when and so soon as the youngest surviving child should attain twenty-one, to sell and divide the produce "between and amongst the testator's wife and all his children who should be then living, in equal shares." And in the case of the death of any child before the estate became saleable, his children were to take his share. The children all died under twenty-one without issue. *Held*, that the wife was entitled to the whole estate. *Castle v. Eate*, 7 Beav. 296.

Cases cited: *Manfield v. Dugard*, 1 Eq. Ca. Ab. 195; *Goodtitle, dem. Hayward v. Whitby*, 1 Burr. 228; *Boraston's case*, 3 Rep. 19 *Doe d. Satterthwaite v. Satterthwaite*, 1 W. Black. Rep. 519; *Batsford v. Kebbell*, 3 Ves. 363; *Murray v. Tancred*, 10 Sim. 465; *Leake v. Robinson*, 2 Mer. 363; *Hanson v. Graham*, 6 Ves. 239; *Doe dem. Haytor v. Joinville*, 3 East, 172.

7. *Revocation*.—*A.* being seised in fee of an estate subject to a term for raising 5,000*l.* for *B.*, made a devise, in general terms, sufficient to comprise the estate. Afterwards, part of it was sold for the remainder of the term, for 7,600*l.*, under a decree for raising the 5,000*l.* and *A.* sold the reversion to the purchaser for a further sum; and an assignment and conveyance were made to complete the sales. The 5,000*l.* was paid to *B.* out of the 7,600*l.*, but the surplus remained in court until long after *A.*'s death. *Held*, that as an exclusive sale had been made under the decree, the surplus retained the character of real estate, and that, notwithstanding the assignment and conveyance, the devise remained unrevoked with respect to it. *Jermy v. Preston*, 13 Sim. 356.

Case cited: *Charman v. Charman*, 44 Ves. 580.

And see *Legacy*.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

BILL, SERVICE OF. — CONSTRUCTION OF ORDER 16 OF MAY 1845, ART. 2, AND ORDER 28.

*The court will not make an order for service of copy of a bill after the 12 days limited by the above orders have expired, without being satisfied by affidavit that the plaintiff has not been guilty of delay.*

THE bill in this case was filed the latter

end of last July, and was shortly afterwards amended.

Mr. Albutt moved for an order for leave to serve a copy of the amended bill on some of the defendants, the 12 days limited by the orders of May 1845, within which such service ought to be made, having expired.

The Master of the Rolls asked if the plaintiff's counsel was furnished with an affidavit to account for the delay since the filing of the bill, and on being answered in the negative, said the affidavit must be made before the order could be granted.

*Horry v. Calder*, Dec. 4, 1845.

Two other similar applications were made in the course of the morning, in both of which his lordship said the delay must be accounted for before he could make any order.

### Vice-Chancellor of England.

AMENDMENTS OF BILL. — ALTERATION IN RELIEF.

*Amendment of a bill, whereby it is converted from a bill seeking to restrain a defendant from defeating the plaintiff's right at law, to one seeking relief obtainable only in equity, is not necessarily such a variation in the original case, as entitles the plaintiff to have the original bill dismissed.*

THIS was a motion, that the amended bill might stand as the original bill, and that the original bill might be dismissed, on the ground that the whole case had been changed by the amendments. The original bill alleged a legal title in the plaintiff under a settlement, and prayed an injunction to restrain the defendant from setting up an outstanding term to defeat the trial of his right at law. The amended bill alleged that there was a sum of money due upon the term, and prayed to be let in to redeem.

Mr. Stuart and Mr. Bury, for the motion, urged that this was an entire change in the object of the bill from relief at law to relief in equity. They cited *Mavor v. Day*, 1 S. & Stu. 113; *Monch v. Lord Tankerville*, 10 Sim. 284. And on the question of costs, *Mounsey v. Burnham*, 1 Hare, 22; *Watts v. Manning*, 1 S. & Stu. 421.

Mr. Bethell, contra.

The Vice-Chancellor said, that the object of the amended bill appeared to him to be substantially the same as that of the original one. The title in the plaintiffs was in each case the same. They imagined, in the first case, that they had a legal right; then the answer set up circumstances showing that it was necessary for them to come into equity for their relief, and then they make an altered case adapted to the new circumstances. Suppose they had prayed, in the alternative, that the defendants might be restrained from setting up the term, if satisfied, or if not, that they might be let in to redeem: that would be sustainable. The motion must be refused.

*Abram v. Ward*, Dec. 15, 1845.

## Queen's Bench Practice Court.

## PLEADING. — NEW ASSIGNMENT, WHEN NECESSARY.

*If to an action for goods sold and delivered a general release be pleaded, the plaintiff is not, under a replication of "non est factum," entitled to show that the debt specified in the particulars of demand, and in respect of which the action is brought, was excepted from the operation of the release, and in order to do so a new assignment is necessary.*

**DEBT.** The particulars of demand claimed 9l. 14s. 7½d. for two pieces of "blue pilot," delivered on Nov. 20th, 1844, and numbered respectively 1889 and 1890, and to a declaration for 10l. due for goods sold and delivered, and an account stated, the defendant pleaded: 1. Never indebted; 2. That after the accrual of the causes of action, to wit, on, &c., 1845, the plaintiff by a certain indenture, sealed, &c., and now shown to the court here, released the said causes of action to the defendant. The plaintiff joined issue on the first plea, and as to the second, replied "Non est factum."

At the trial, before Mr. Secondary James, it appeared that after the goods in question were delivered, the plaintiff and the other creditors of the defendant agreed to accept a composition of 6s. in the pound, and in support of the second plea the defendant produced a deed of composition executed by them, and dated Jan. 15, 1845, whereby they released him from the debts set opposite to their respective names, and from all actions, &c. in respect thereof. The sum of 142l. 2s. 3d. was set opposite to the plaintiff's name, but of what that sum was made up did not appear in the deed, nor was the debt in question any where specifically mentioned therein. In answer to this, the plaintiff gave evidence showing that the debt mentioned in the particulars was not included in the release. The learned Secondary, however, being of opinion that in order to let in such evidence, a new assignment was necessary, the plaintiff elected to be nonsuited, leave being reserved to him to move to set it aside.

*H. Wilde* moved accordingly, and contended that the issue raised by the replication of "Non est factum," was not, under the circumstances of this case, confined to the question of whether the deed was or was not executed by the plaintiff; but that the issue was, whether the deed was intended to release the debt specified in the particulars. *Simons v. Johnson*, 3 B. & Ad. 175; *Moses v. Levi*, 4 Q. B. 213. By the rules of pleading, the plaintiff, being a party to the deed, could not have replied that the "plaintiff did not release," (*Taylor v. Needham*, 2 Taunt. 278, Stephen Pl. 3rd ed. 196); and a new assignment is only necessary when the defendant may have been misled by the form of the plaintiff's complaint; but here, considering the terms of the particulars of demand, it is impossible that such could have been the case.

*Cur. adv. vult.*

*Patteon, J.*, on Nov. 25, said, that the particulars of demand were no part of the declaration, and that as the declaration was general, and the release was not restrained to any particular goods, the plaintiff ought to have new assigned.

Rule refused.

*Jubb v. Ellis*, Michaelmas Term, 1845.

## Exchequer.

## SUMMONS TO STAY PROCEEDINGS. — PAYMENT INTO COURT.

*Where after writ issued the defendant obtains a summons to stay proceedings on payment of a certain sum, which the plaintiff refuses to accept, alleging that more is due, and on the trial the plaintiff recovers less than that amount, he is entitled to costs, unless the defendant has paid the sum offered into court.*

*Gray* had obtained a rule nisi to rescind an order of *Platt, B.*, directing the master to review his taxation of the plaintiff's costs. The action was brought by an administratrix for work and labour done by the intestate. After service of the writ, and before declaration, the defendant took out a summons to stay proceedings on payment of 40l. and costs. The plaintiff declined to accept the sum offered, alleging that more was due, and in consequence no order was made upon that summons. The defendant applied for leave to plead a plea denying that the plaintiff was administratrix, and also payment of the 40l. into court; but upon its being objected that the payment of money into court would admit the representative character of the plaintiff, the defendant withdrew the latter plea. The cause went down to trial upon other issues, and a verdict was taken for the plaintiff, subject to the award of an arbitrator,—the costs of the cause to abide the event. The arbitrator ordered the verdict to stand for the plaintiff, and awarded 22l. 10s. damages. The master, on taxation, having allowed the plaintiff the ordinary costs of the cause, a summons was taken out to review his taxation, by disallowing the plaintiff his costs from the time of the summons to stay proceedings on payment of the 40l., and *Platt, B.*, made an order accordingly, which the present application sought to set aside.

*Hugh Hill* showed cause, and argued that under the circumstances the plaintiff was not entitled to the costs subsequent to the offer to pay the 40l. He cited *Parsons v. Pitcher*, 4 Bing. N. C. 306.

*Pollock, C. B.*—The rule must be absolute. As the defendant did not pay the money into court, the plaintiff could not do otherwise than go on with the action.

*Alderson, B.*—The rule is, that where the parties go before a judge, and the defendant offers money, which is refused, the plaintiff is

only deprived of his costs in the event of the money being paid into court.

Rule absolute.

*Clark, administratrix, v. Dann, Michaelmas Term, 1845.*

Court of Bankruptcy.

INSOLVENT TRADER.—FIAT UPON DECLARATION OF INSOLVENCY.

HENRY HARRIS, who described himself as a "Teacher at the Jews' Orphan Asylum," petitioned the Court of Bankruptcy for protection from process under the stat. 7 & 8 Vict. c. 96. The petition stated that the petitioner was not a trader; and it appeared from his schedule that he owed debts to the amount of about 600*l*. This petition came on for hearing before Mr. Commissioner Holroyd, on the 27th Nov. last, and it appeared, upon examination of the insolvent, that in and previous to the year 1839, he had carried on business as a carver and gilder, in the neighbourhood of Soho Square, and that two of the debts in his schedule, the one for 45*l*. and the other for 36*l*., were contracted in the course of trade, and kept alive by bills subsequently given for the amount; but that for five years last past the petitioner was employed in the business of schoolmaster to a public institution, and had not engaged in trade. It was submitted by counsel on behalf of an opposing creditor, that as the petitioner's schedule showed he was indebted for debts contracted in the course of trade, and that his debts amounted to above 300*l*., the court had no jurisdiction under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, which are only applicable to a petitioner "either not being a trader within the meaning of the statutes relating to bankrupts, or, being a trader within the meaning of the said statutes, owing debts amounting on the whole to less than three hundred pounds." The learned commissioner considered this objection fatal, and dismissed the petition.

Henry Harris afterwards filed a declaration of insolvency as prescribed by the statute 6 Geo. 4, c. 16, s. 6, and the Lord Chancellor, upon his own petition, ordered a fiat in bankruptcy to issue against him, and authorised the prosecution thereof in the Court of Bankruptcy in London, pursuant to the provision of the 7 & 8 Vict. c. 96, s. 41.<sup>a</sup>

<sup>a</sup> The section is as follows: — "That the Lord Chancellor shall have power, upon petition made to him in writing by any trader who shall have filed a declaration of insolvency in manner and form prescribed by the statute in that case made and provided relating to bankrupts, and upon payment of the like sum as is payable upon the granting a fiat upon the petition of a creditor, to be carried to and applicable to the purposes of the account in the Bank of England, intituled 'The Secretary of Bankrupts' Account,' to issue a fiat in bankruptcy

The bankrupt's solicitor, Mr. Watson, came before Mr. Commissioner Goulburn, on the 6th December, to open the fiat, but as it then appeared that there was no single trade creditor whose debt amounted to 50*l*., and that the bankrupt was not prepared with any proof of his trading, other than his own deposition, the learned commissioner, without pronouncing any opinion, adjourned the opening of the fiat. A similar application was made to Mr. Commissioner Shepherd, on behalf of the bankrupt, on the 8th December, but under the circumstances the learned commissioner declined to adjudicate, not being satisfied with the proof of trading. On the following day, an application was made to Mr. Commissioner Holroyd, who stated that he was prepared to open the fiat, if the bankrupt produced evidence that he had been in trade, and still owed any debt arising out of his trading transactions. The learned commissioner was of opinion, that the trading ought to be proved by some evidence ultra the deposition of the bankrupt himself. One of the two persons to whom the bankrupt had incurred debts when in trade was produced on a subsequent day, and satisfactorily proved the fact, that the bankrupt was in trade as a carver and gilder, and as such trader contracted a debt with the witness to the amount of about 40*l*., for such sum, with interest, the bankrupt afterwards gave a bill, which was still unpaid. The learned commissioner's attention was called, by the bankrupt's solicitor, to the fact, that no creditor's debt, accruing whilst the bankrupt was in trade, amounted to such a sum as would entitle the creditor to petition under the bankrupt laws; but the learned commissioner thought the amount of the debt or debts was immaterial, and that as the fiat issued upon the application of the trader, he was only called upon, under the 7 & 8 Vict. c. 96, s. 41, to give proof of trading and filing a declaration of insolvency. The necessary proof having been given on these points, the learned commissioner made an adjudication of bankruptcy under the fiat, and the trader's name appeared in the Gazette on the 12th December last.<sup>b</sup> A meeting for the examination of the

against such trader, and to authorise the prosecution thereof in the Court of Bankruptcy in London, or in any district Court of Bankruptcy; and that it shall and may be lawful for such court so authorised as aforesaid, upon the application of such trader, and upon proof of the trading and of the filing of such declaration, or upon the application of any creditor or creditors of such trader to such amount as by the said statute required for a petitioning creditor's debt, and upon proof of the matters requisite to support a fiat issued upon the petition of a creditor, to make the adjudication of bankruptcy under such fiat, and all further proceedings under such fiat shall be thenceforth prosecuted and carried on in like manner as if such fiat had been issued and adjudicated upon on the petition of a creditor of the bankrupt."

<sup>b</sup> See ante, p. 179.

bankrupt and choice of assignees was advertised in due course, but upon the day appointed for such meeting, it was stated by Mr. Foord, an attorney on behalf of the creditors, that an application to the Court of Review to supersede the fiat was contemplated; and upon this representation Mr. Commissioner Holroyd adjourned the choice of assignees, no creditor appearing to prove a debt under the fiat.

### CHANCERY SITTINGS.

*Hilary Term, 1846.*

AT WESTMINSTER.

#### Lord Chancellor.

Monday	Jan. 12	Appeal Motions.
Tuesday	13	Petition-day.
Wednesday	14	} Appeals.
Thursday	15	
Friday	16	
Saturday	17	
Monday	19	
Tuesday	20	} Appeals.
Wednesday	21	
Thursday	22	
Friday	23	
Saturday	24	
Monday	26	} Appeals.
Tuesday	27	
Wednesday	28	
Thursday	29	
Friday	30	
Saturday	31	Appeal Motions.

#### Vice-Chancellor of England.

Monday	Jan. 12	Motions.
Tuesday	13	(Petition-day)
Wednesday	14	} Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Thursday	15	
Friday	16	} Unopposed Petitions, Short Causes and Causes.
Saturday	17	
Monday	19	} Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Tuesday	20	
Wednesday	21	
Thursday	22	Motions.
Friday	23	} (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday	24	
Monday	26	} Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday	27	
Wednesday	28	
Thursday	29	
Friday	30	} (Petition-day) Unopposed Petitions, Short Causes and Causes.
Saturday	31	

#### Vice-Chancellor Knight Bruce.

Monday	Jan. 12	} Motions, and part-heard case.
Tuesday	13	
Wednesday	14	} (Petition-day) Petitions and Causes.
Thursday	15	
Friday	16	} Bankrupt Petitions and Causes.
Saturday	17	
Monday	19	} Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday	20	
Wednesday	21	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	22	
Friday	23	} Petitions and Ditto.
Saturday	24	
Monday	26	} Short Causes and Causes.
Tuesday	27	
Wednesday	28	} Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	29	
Friday	30	} Bankrupt Petitions and Causes.
Saturday	31	

#### Vice-Chancellor Stigram.

Monday	Jan. 12	Motions and Causes.
Tuesday	13	} (Petition-day) Pleas, Demrs. Exons., Causes, and Further Directions.
Wednesday	14	
Thursday	15	} Pleas, Demurrers, [Exceptions, Further Directions, and Causes.
Friday	16	
Saturday	17	} {Short Causes, Petitions, (unopposed first,) and Causes.
Monday	19	
Tuesday	20	} Pleas, Demurrers, Exons. Further Directions, and Causes.
Wednesday	21	
Thursday	22	Motions and Ditto.
Friday	23	} (Petition-day) Pleas, Demurs., Exons., Causes, and Fur. Dirs.
Saturday	24	
Monday	26	} Short Causes, Petitions, (unopposed first,) and Causes.
Tuesday	27	
Wednesday	28	
Thursday	29	
Friday	30	} Pleas, Demurrers, Exceptions, Further Dirs. and Causes.
Saturday	31	

CHANCERY CAUSE LISTS.

Master of the Rolls.

Hilary Term, 1846.

JUDGMENTS.

Bennet v. Cooper.

PLEAS AND DEMURRERS.

*Stand over*, Dean of Ely v. Gayford, 6 pleas.  
Bainbridge v. Baddeley, dem.  
Bainbridge v. Baddeley, dem.  
Bainbridge v. Baddeley, dem.

CAUSES.

*Stand over*, James v. James.  
Walton v. Potter.  
Hope v. Hope  
Same v. Same  
Same v. Same  
Till mentioned, Richardson v. Horton, Same v.  
Taylor, Same v. Derby, fur. dirs. and costs.  
Attorney-General v. Beddingfield.  
S. O. to file suppl. bill, Hele v. Bexley, Same v.  
Same, exons.  
With Gibson Sturgis, Gibson v. Nicol, Same v.  
Alsager.  
Earl of Dundonald v. Norris.  
Part heard, Mqs. of Hertford v. Lord Lowther,  
exons.  
S. O. Short, Parker v. Parker.  
Trinity Term, Campbell v. Crook, exons.  
S. O. part heard, Lethridge v. Chetwode, and  
petition.  
Part heard, Lord Nelson v. Lord Bridport, exons.,  
fur. dirs. costs and petn.  
Part heard, Augerand v. Parry.  
Hodgkinson v. Cooper.  
Weekes v. Dodson, Same v. Same, Grover v.  
Weekes, fur. dirs. costs and petition.  
Harris v. Farwell.  
Haldenby v. Spofforth, Same v. Same, Same v.  
Dunn, Clark v. Same, fur. dirs. and costs.  
Donovan v. Needham, re-hearing.  
Attorney-General v. Newman; Attorney-General  
v. Courtenay.  
Attorney-General v. James.  
Leavins v. Edmondson, Same v. Limbert, Same v.  
Same, Same v. Same, Same v. Renton, Same v.  
Same, exons. fur. dirs. and costs.  
Hooper v. Green.  
Cross v. Kennington, Same v. Same, fur. dirs.  
and costs.  
Snow v. Tilby.  
Barker v. Wallis.  
Passingham v. Sherborn, Same v. Same, Same v.  
Rowe, fur. dirs. and costs.  
Beavan v. Gilbert, exons.  
Heming v. Archer, Same v. Same, Same v. Same,  
fur. dirs. and costs and petition.  
With Griffith Kelly, Kelly v. Norris.  
Barker v. Thurnall, Same v. Graham.  
Lucchesi v. Ashley.  
Hedges v. Harper, fur. dirs. and costs.  
Clarke v. Tipping.  
Golding v. Castle, Same v. Golding, Same v.  
Otto, fur. dirs. costs and petition.  
Grose v. Ewer.  
Burrell v. Baskerfield, Same v. Gasse, Same v.  
Lipcombe, Same v. Frampton, Same v. Kempe, Same  
v. Walton, exons., fur. dirs. costs and petition.  
Tanner v. Dancy, Same v. Newman, fur. dirs.  
and costs.  
Attorney-General v. Clark.  
Benson v. Lamb, at defts. request.

Farquhar v. East India Co., Morgan v. Same, fur.  
dirs. and costs.  
Seifferth v. Badham, fur. dirs. & costs.  
Lambert v. Newark, Same v. Pike, Same v. Hall,  
Same v. Barton, fur. dirs. and costs.  
Smyth v. Lowndes.  
Sherwood v. Beveridge.  
Bourne v. Brett, Same v. Cooksey, fur. dirs. and  
costs.  
Beavan v. Gilbert, exons.  
Gee v. Gurney, fur. dirs. & costs.  
Petty v. Petty, Same v. Same, Same v. Hartley,  
Same v. Bolton, Same v. Lonsdale, Same v. Brown,  
Pycroft v. Petty, Same, v. Brown, fur. dirs. and  
costs.  
Man v. Ricketts, Same v. Halifax, exons.  
Yearwood v. Yearwood.  
Day v. Holbrook, exons.  
Matthie v. Edwards.  
Thorpe v. Duke.  
Whitton v. Field, Same v. Williams, fur. dirs.  
and costs.  
Baker v. Sowter, Same v. Same, Same v. Same.  
fur. dirs. and costs.  
Taylor v. Taylor.  
Richardson v. Corbett, fur. dirs. and costs.  
Nelson v. Duncombe.  
Robertson v. Towgood.  
Ambrose v. Dunmow Union.  
Thorold v. Gylby.  
Peach v. Miles, fur. dirs., and costs.  
Forbes v. Leeming.  
Heather v. Norbury.  
Griffith v. Kelly, to come on with Kelly v. Nor-  
ris.  
James v. James, Same v. Same, Same v. Lloyd,  
fur. dirs. and costs.  
Ghost v. Waller, Upton v. Waller, original bill,  
and bill of revivor and supplement.  
Evans v. Jones, Same v. Brown, exon. fur. dirs.  
and costs.  
Evans v. Griffiths, bill of revivor.  
Lockhart v. Hardy, Thomas v. Hardy, Newman  
v. Hardy, Hardy v. Lockhart, Lockhart v. Arundell,  
Same v. Lee, Same v. Hardy, Same v. Crouch, excep-  
tions, 2 sets, fur., dirs. and costs.  
Ravens v. Taylor, Same, v. Hinrich, fur. dirs. and  
costs and 3 petitions.  
Marquis of Bute v. Harman, fur. dirs. and costs.  
Nobell v. Noble, Same v. Cheer, fur. dirs. and  
costs.  
Gilbert v. Schwenck.  
Baker v. Harrison.  
Dunning v. Hards.  
Matthews v. Bagshaw, Same v. Leyburn, original  
bill and bill of revivor.  
Cox v. King, Cutwell v. White, exceptions, and  
fur. dirs. and costs.  
With Nicols v. Alsager, Gibson v. Sturgis, suppl.  
bill.  
Reebee v. Perry, Kay v. Price, Kay v. Tomkys,  
fur. dirs. and costs.  
Malden v. Tyson, fur. dirs. and costs.  
Heming v. Archer, suppl.  
Easum v. Easum, Buckle v. Easum, Same v.  
Buckle, exons. fur. dirs. and costs.

Stallard v. Bennett.  
Gardner v. Gardner.  
Hodgkiss v. Hipkiss.  
Chalmers v. Wotmough.  
Atkyns v. Bankes, fur. dirs. and costs.



## COMMON LAW SITTINGS.

In and after Hilary Term, 1846.

## Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Friday . . . Jan. 16	Wednesday . . . Jan. 21
Friday . . . 23	Wednesday . . . 28

After Term.

MIDDLESEX.	LONDON.
Monday . . . Feb. 2	Tuesday . . . Feb. 5

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Thursday the 3d Feb., in London, no causes will be tried, but the court will adjourn to a future day.

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

Hilary Term, 1846.

New Trials remaining undetermined at the end of the Sittings after Michaelmas Term, 1845.

Michaelmas Term, 1844.

London.—Bodmer v. Butterworth and another.

Bristol.—Gale v. Lewis, part heard.

Liverpool.—The Queen v. Co-operation of Manchester.

Glamorgan.—Burgess v. Taff Vale Railway Co.

Radnor.—Doe d. Woodhouse v. Powell, part heard.

Hilary Term, 1845.

Middlesex.—Hope v. Harman and others, stands for arrangement.

London.—Henzell v. Hocking and another; Hayne v. Rhodes and others; Lowe v. Penn.

Tried during Hilary Term, 1845.

Middlesex.—Edden v. Brown; Hill and another v. Kendall; Parnell v. Smith and another; Same v. Same.

Easter Term, 1845.

Middlesex.—May and wife v. Burdett; Cocker v. Musgrove and another; Normansal v. Cress; Johnson and another, assignees, v. Wolsey; The Queen v. Hon. E. Pelham.

London.—Ford v. Dornford, executors, &c.; Bowles v. Millbourn, sued, &c.; Alfred v. Farlow; Meers v. Green; The Queen v. Douglas.

Herts.—Griffiths v. Lewis.

Surrey.—Solomon v. Lawson; Dobson, Kat., and another v. Blackmore, the elder; Girdlestone v. M'Gowan, in replevin.

Bucks.—Rowles v. Senior and others; Bryant v. Jennings.

Cambridge.—Layton v. Hurry.

Chester.—Doe several dems. of her Majesty and another v. Archbishop of York and others; Stewart v. Wilkinson.

Wills.—Lee v. Merrett.

Devon.—Doe d. Earl of Egremont v. Courtenay.

Devon.—Doe d. Dayman v. Moore; Wood v. Hewett; Barratt v. Oliver; Doe d. Molesworth,

Bt. and others v. Bloomer and another; Tanner, executrix, &c. v. Moore.

Somerset.—Lambert v. Lyddon.

Northumberland.—Bolam v. Shaw; Davidson v. Reed.

Durham.—Ray v. Thompson; The Queen v. Great North of England Railway Co.; Hansell v. Hutton, Esq.

York.—Doe d. Lord Downie v. Thompson; Lord Viscount Downie v. Thompson; Phillips v. Broadley; Patch and wife v. Lyon; Brown v. Ayre; Wilson v. Nightingale and others; James v. Brook.

Liverpool.—Cannall, clk. v. Gandy.

Lincoln.—Saffery v. Wray.

Notts.—Parker v. Deaneott.

Leicester.—Hassell v. Heming; Doe d. Bowley and others, Churchwardens, &c. v. Barnet.

Warwick.—Blakesley v. Smallwood and another.

Stafford.—Hinskeep v. Harper and others.

Salop.—Stokes v. Boycott, Esq.

Monmouth.—Priest v. Gratvax; Williams v. Stiven.

Gloucester.—Clutterbuck v. Halla.

Glamorgan.—Doe d. Simpson v. Jobs.

Tried during Easter Term, 1845.

Middlesex.—Hopkins v. Richardson.

Trinity Term, 1845.

Middlesex.—Rich v. Dix; Carling v. Shepherd.

London.—Sheringham v. Collins; Day, by her next friend, v. Edwards; Sedgwick v. Hammon.

Tried during Trinity Term, 1845.

Middlesex.—Paul and wife, executrix, &c. v. Simpson; Mitchell v. King.

Michaelmas Term, 1845.

Middlesex.—Wimberley v. Hunt; Baker v. Drew; The Queen v. Thornton; Gibbons v. Hunter; Goode v. Cochrane; Ford v. Beech; Jacobs v. Dawes.

London.—Buisson v. Staunton; Brown v. Harnor; Welsh and another v. Reed; Murrista v. Oldfield; Nicoll v. Gillan.

Stafford.—Skerratt v. Christie and another; Biddestons and others, assignees, &c., v. Burdett.

Essex.—Rogers v. Kennay; Doe d. Goody v. Carter.

Surrey.—Gillett v. Ballivant; Youll v. Cress; Archer v. Smyth; Doe d. Pennington and others, v. Barrell and another.

Northampton.—Sutton, a pauper, v. Maguire.

Cardiff.—Taylor v. Clay and another; Doe d. Lord v. Kingsbury.

Carmarthen.—Prothero v. Jones; Chambers, Esq. v. Thomas and another in replevin; Same v. Same.

Cardigan.—Doe d. Jenkyns and another v. Davies and others.

Brecon.—Maybery v. Mansfield.

York.—Smith v. Smith; Marshall v. Powell and another; Spence, a pauper, v. Meynell, Esq., and another; Doe d. Norton v. Norton; Bainbridge v. Bourne, the younger; Wilkinson v. J. Hay Garth in trespass; Same v. Same; Bainbridge v. Lax and others.

Durham.—Smith v. Hopper and others; Reed v. Same; Hind v. Raine and another.

Devon.—Doe d. Earl of Egremont v. Sydenham, clk.; Mayor, &c. Exeter v. Harvey and another; Damerall v. Prothero and others; Schank v. Sweetland.

Cornwall.—Macbail, Esq. v. Hicks.

Somerset.—Doe d. Earl of Egremont v. Williams and another.

Bristol.—Addison v. Gibson.

## SPECIAL CASES AND DEMURRERS.

*Hilary Term, 1846.*

(Standing for the Judgment of the Court.)

Perry v. Fitzhove, dem.  
 Nicholls v. Stretton, dem.  
 Blakesley v. Smallwood and another executors, dem.  
 Milner v. Nyers, dem.  
 Same v. Singleton, dem.  
 Same v. W. Jordan, dem.  
 Same v. Dixon, dem.  
 Same v. Frankish, dem.  
 Same v. F. Jordan, dem.  
 Elwell v. Birmingham Canal Company, special case.  
 Wrighton v. Greenacre, dem.  
 Chawner v. Cummings, special case.  
 Pilkinhorn v. Wright, dem.  
 Nicholas v. Wright, dem.

(Standing for Argument.)

Geeling v. Veley and another, dem.  
 Lomas v. Ashworth, special case.  
 Hutt v. Morrell and another, dem.  
 Ramball and another v. Mount, special case.  
 Wakefield and another v. Brown, dem.  
 Beissen v. Staunton and another, dem.  
 Oliveron and another v. Brightman and others, special case.  
 Bold and another v. Rotherham, special case.  
 Barley v. Walford, dem.  
 Allport v. Nutt, dem.  
 Crow v. Falk and another, dem.  
 Lovelock v. Franklyn and another, executors, &c. dem.  
 Hawkins v. Benton, dem.  
 Parnell v. Jones, dem.  
 Baillie v. Moore, Esq. dem.  
 Symonds v. Harding, clk. dem.  
 Braithwaite v. Gardiner, Bt. dem.  
 Harold v. Whitaker, dem.  
 Scott v. Hartley, dem.  
 Dale v. Pollard and others, special case.  
 Pollitt v. Forrest and others, error.  
 Stephenson, executor, &c. v. Newman, secy., &c. dem.  
 Barber and others, v. Butcher, dem.  
 Swallow v. Ridgway, dem.  
 Churley v. Boycott the younger, dem.  
 Scadding v. Lorient, special case.  
 Vine and another v. Bird, dem.  
 Rigby v. Weymouth, dem.  
 Edmunds v. Evans, dem.  
 Carter v. Nichols, dem.  
 Vine and another v. Bird, dem.  
 Higgins v. Thomas, dem.  
 Garrett v. Dryden, Bt., dem.  
 Taylor v. Brook, dem.  
 Giles v. Giles, dem.  
 Gatty v. Field and others, dem.  
 Wintle v. Graves, dem.  
 Rogers v. Grazebrook, dem.  
 Dolby v. Rimington and another, dem.  
 Penall and others, assignees, v. Rhodes and another, special case.  
 Carruthers v. Chapman sued with another, dem.  
 Springett v. Morrell and another, dem.  
 Robinson v. Hawkford, special case.  
 Flauden v. Bunbury, special case.  
 Sharp v. Watts, dem.

## Common Pleas.

*Remanet Paper of Hilary Term, 9 Vic., 1846.**Enlarged Rules.*

To 1st day.—Barron v. Jupp.  
 To 5th day.—Healy v. Young and another.  
 To 6th day.—Tolson v. Bishop of Carlisle and others.

*New Trials of Michaelmas Term last.*

London.—Bunn v. Bolton; Holcroft v. Hoggins and others; Whipham v. Jawson; Beaumont v. Gresham; Simmons v. Millington; Hearne v. Turner; Furneaux v. Goulbourn; Boyd v. Moyle.  
 Kent.—Mason v. Davies.  
 Surrey.—Vallance v. Duke of Brunswick; Cooke v. Wetherell, clk.  
 Sussex.—Ward v. Firmin.  
 Radnor.—Middleton v. Davies.  
 Northampton.—Martindale v. Falkner and others.  
 Liverpool.—Holden v. Liverpool New Gas and Coke Company.  
 Yorkshire.—Doe (Atkinson) v. Fawcett and others.  
 Bristol.—Price and ux. v. James; South v. Strawbridge.

## CUR. AD VULT.

Coxhead v. Richards.  
 Blackham v. Pugh.  
 Patteson and others v. Holland and others.  
 To stand over till result of sci. fa. in Queen's Bench is ascertained.  
 Doe Woodall and others v. Woodall and another.  
 Lewis v. Lord Kensington.

*Demurrer Paper of Hilary Term, 9 Vic., 1846.*

Monday . . . Jan. 12	} Motions in arrest of judgment.
Tuesday . . . 13	
Wednesday . . . 14	
Thursday . . . 15	
Friday . . . 16	Special arguments.

Fivas v. Nicholls.  
 Wood v. Kerry.  
 Chapman v. Sutton.  
 Wilkins v. Hopkins.  
 Wade v. Simeon.  
 Atkins v. Humphrey, sued, &c.  
 Johnson and another, assignees, v. Welleale, Honble.  
 The Queen v. Foley, clk., sued, &c.  
 Gordon and others v. Ellis and another.  
 Hockey v. Bannister.  
 Kingdon v. Cox.  
 Wright v. Burroughs and others.  
 Powles P. Off. v. Page.  
 Smith v. Shirley.  
 Gibbs and another v. Flight and another.  
 White, administrator, v. Hamecock.  
 Beard v. Egerton and others.  
 Wednesday, Jan. 21. Special arguments.  
 Friday, 23. ditto.

## Exchequer of Pleas.

## PREEMPTORY PAPER.

*For Hilary Term, 9 Vic., 1846.*

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary before the motions.

Date Rule Nisi, 7th Nov. 1845. — Bromhead v. Hall.

14th Nov. 1845.—Malone v. Howell and others.  
 22nd Nov. 1845.—Phillips v. Lewis; Mendham, administrator, v. Cook.  
 20th Nov. 1845.—Sagden v. Boulsover, sued, &c.; Dixon v. Oliphant, executors, &c.

## NEW TRIAL PAPER.

For Hilary Term, 9 Vict., 1846.

For Argument.

Moved Hilary Term, 1845.

London, Lord Chief Baron.—Newall v. Webster and others.

(20th Nov. 1845, Enlarged to 4th day of Hilary Term.)

Moved Michaelmas Term, 1845.

Middlesex, Lord Chief Baron.—Bunnett v. Smith. London, Lord Chief Baron.—Goodyear v. Simpson and others; Farrow and others v. Vardy; Denham v. Preston and Wyre Railway, &c. Company; Load and another v. Green and others; Sibree v. Tripp.

Northampton, Mr. Justice Maule.—Pennell and another, assignees, &c. v. Stephenson.

Warwick, Lord Chief Baron.—Farrington v. Farrington; Huntingdon, on affidavit, v. Grand Junction Railway Company.

Anglesea, Mr. Baron Parks.—Hughes v. Brickland and others.

Buckingham, Mr. Justice Williams.—Doe, several demises of G. Steele v. Hill.

Norwich, Mr. Baron Alderson.—Marriott v. Barber.

York, Mr. Baron Rolfe.—Petch v. Tutin and others; Same v. Same and others; Shaw v. Hollan; Alder and another, assignees, on affidavits, v. Keighley.

York, Mr. Justice Cresswell.—Norton, on affidavits, v. Edgley.

Northumberland, Mr. Baron Rolfe.—Knight, clk. v. Marquis of Waterford.

Carlisle, Mr. Justice Cresswell.—Mounsey, P. O. v. Mounsey.

Liverpool, Mr. Justice Cresswell.—Marrow v. Chapman, P. O., &c.; Rayner v. Grote and another; Newton v. Grand Junction Railway Company; Taylor v. Lawrence; Toulmin and another v. Hedley.

Exeter, Mr. Justice Erle.—Pyle v. Partridge in replevin.

Bridgewater, Mr. Baron Platt.—Draper v. Croft, sued with another.

Bristol, Mr. Justice Erle.—Kynaston and others, assignees, &c. v. Davies and others; Leonard v. Baker; Stacy, on affidavit, v. Henley.

Abingdon, Lord Denman.—Cumming v. Bedborough.

Stafford, Lord Denman.—Aston v. Perkes and another.

Maidstone, Lord Chief Justice Tindal.—Pratt, on affidavits, v. Hawkins.

Croydon, Lord C. J. Tindal.—Lillywhite v. Deveaux; Croucher v. Etherington.

Cardiff, Mr. Justice Coltman.—Doe, several demises of Bippert and others v. The Mayor of Swansea.

Chester, Recorder of Chester.—Harrison v. Ruscoe.

London, Secondary.—Brown and others v. Wilkinson and another.

Moved Easter Term, 1844.

Liverpool, Mr. Baron Rolfe.—Rogers and another v. Maw.

[Moved after the 4th day of Michaelmas Term, 1845.

Middlesex, Mr. Baron Platt.—Hills v. Haswell; Reeve and another v. Metcalfe; Goding and others on affidavits, v. Hanne.

## SPECIAL PAPER.

For Hilary Term, 9 Vict., 1846.

For Judgment.

Duncan v. Benson, dem.  
 (Heard 2nd June, 1845.)

Slater and administratrix, v. Dangerfield, special case.

(Heard 28th June 1845.)

Bevins v. Hulme, dem.  
 (Heard 10th Nov. 1845.)

Sanders, executrix v. Coward, dem.  
 (Heard 1st Dec. 1845.)

Brooke v. Spong and others, dem.  
 (Heard 4th Dec. 1845.)

For Argument.

Davis v. Nutt, dem.  
 (To stand over until similar case disposed of in Common Pleas.)

Offer v. Windsor, dem.  
 Ashley and others v. Pratt and others, special case, by order of the late Lord Abinger.  
 Doe d. Marquis of Bute v. Guest, Bt., special case by rule of Court.

Richards v. Easte, special case, on award by order of Court.

Griffiths v. Pyke, dem.

## HILARY TERM EXAMINATION.

THIS examination will probably take place on Thursday, the 22nd instant. There are 120 candidates entitled to be examined; but, judging from experience, the number will probably not exceed 100.

## THE EDITOR'S LETTER BOX.

WE received a communication too late to notice last week, relating to a proposed Society for Articled Clerks. We think that some part of the scheme is useful, and has indeed been successfully tried, but other parts seem to be too ambitious, and scarcely suitable to the temporary condition of the articulated clerk, who of course will soon take a higher standing. Some of the suggestions, also, are evidently impracticable. Still there is considerable merit in the plan, and the proposer is entitled to encouragement; but he should take advice, and consider the details minutely. When better matured, we shall be ready to give it our best attention.

We believe that the marriage mentioned by "A Subscriber" would not be legal according to the law either of Scotland or England, and therefore that the Gretna-Green ceremony would be of no avail.

"A Constant Reader" observes, that there is a very impertinent letter in the *Times* from a barrister's clerk, which should be noticed. We think it desirable, after the statement we gave last week, to defer any comment until the Master of the Rolls has decided the question raised by Mr. Cotton.

# The Legal Observer.

SATURDAY, JANUARY 17, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## RAILWAY LEGISLATION.

THE number of projected railway companies in existence on the 17th November last, according to the account of Mr. Spackman, published in the *Times* newspaper of that date, was no less than 1,263. It now, however, appears (by the *Times* of the 14th instant) that this number—enormous and startling as it seemed—fell short of the reality by 131. So that the true number of new lines ought to have been set down at 1,394. Of these, upwards of 500 failed to make the necessary deposit of plans, sections, and books of reference in the office of the Board of Trade on the 30th November, as required by the standing orders, and thus, for the present year, fell at once to the ground. Nearly 800 companies, however, made due, or at least formal, compliance with this all important parliamentary requisition, and consequently, supposing other essential preliminaries to be in like manner performed, would be in a state to proceed with their measures in the session now about to be opened.\* One of these indispensable steps was comparatively of easy execution, being no more than this: simply to lodge, on or before the 31st December,

copies of their respective plans, sections, and books of reference, in the Private Bill Office of the House of Commons, and also in the Parliament Office of the House of Lords. It appears, however, that only 384 companies have made the necessary lodgments in both houses of parliament. These, therefore, must be considered as up to the present stage efficient. But to them must be added amalgamation lines, amounting in all to probably not more than 20 or 30. So that there are about 400 companies whose bills, to all outward appearance, are at this moment in a fair way of being submitted to the consideration of the legislature.

But the time fast approaches when, by virtue of another requirement of the standing orders, these companies will have to deposit a commodity more difficult of production than plans, sections, and books of reference. We are now alluding to the heavy pecuniary contributions which by the standing orders are required to be placed in the hands of the Accountant-General of the Court of Chancery, on or before the 6th day of February, to the credit of the promoters. As observed by us in a former article,<sup>b</sup> the obligation incumbent on railway companies whose bills were not before parliament in the last session, or companies which were not then provisionally registered, or whose subscription contract was not executed or partly executed on the 29th July last, are bound

\* The standing order as to depositing plans, sections, and books of reference, did not apply where the object was merely to amalgamate existing companies. Cases of this description, therefore, are to be added to the 800 above referred to.

to deposit with the Court of Chancery a tenth part of their subscribed capital,—that is to say, a tenth part of three-fourths of the sum estimated to be sufficient for the execution of the proposed works. At the hazard of repetition, we may as well state here that there must be an estimate made of the expense of these works. Of that estimate, three-fourths must be subscribed. And of this subscribed capital, one-tenth must be deposited. If, peradventure, it should so happen that more than three-fourths are subscribed,—if, for example, the full amount of the estimate is subscribed,—it will still only be necessary to deposit a tenth part, not of the whole, but of three-fourths of the sum estimated to be required for the execution of the works.

The deposit in the Court of Chancery must be made on or before Friday, the 6th of February. We say Friday, the 6th of February, because the *Times* of the 10th instant erroneously stated the day appointed for this purpose to be the 29th of January. The standing order fixes this matter as follows:—It says, in the first place, that the deposit shall be made before the presentation of the petition for leave to bring in the bill. Now the time limited for presenting that petition is fourteen days after “the first Friday in every session of parliament.” The ensuing session will open on Thursday, the 22nd of this month; the following day, Friday, the 23rd, will therefore be the *terminus a quo*. So that, beginning to reckon with Saturday, the 24th instant, inclusively, the fourteen days will expire on Friday, the 6th of February. And that day, accordingly, is the last day allowed for making the deposit in the Court of Chancery, the standing order stating that it must be made “previously to the presentation of the petition.”

In a former article we drew attention to the distinction which exists between the cases which require a deposit of 10 per cent. and those which require a deposit of only 5 per cent. Assuming that that distinction is borne in mind, we have now to offer some remarks on the very serious difficulties which are by many anticipated as certain to arise in making good the necessary payment within the time prescribed.

The standing orders contemplate that the deposit shall be made in *money*,—that is to say, in that medium which is termed legal tender, namely, notes of the Bank of England or sovereigns. The payment in all cases will probably be deferred till the last possible moment. For although the Speaker of the Lower House has issued a notice that the deposits may be paid by instalments, he has not ventured (and it would be beyond his power) to postpone the day appointed for the payment. In these circumstances, we apprehend it to be pretty certain that a very great and inconvenient derangement of the money market will be produced by the necessity of collecting together on a particular day so enormous a sum of notes and specie as will be required for the purpose of these deposits.

The question naturally arises, why should not securities be accepted instead of cash? Why should not exchequer bills be taken? There is nothing to prevent this but the standing orders. Well, but the standing orders are not an act of parliament. Why should not their extreme stringency be relaxed on the first night of the session? The object of the deposits is, to establish a *prima facie* case of solvency on the part of the promoters. But that object is just as well accomplished by an exhibition of good securities as by a barren display of gold and bank notes. We look upon it, therefore, as extremely probable that Sir Robert Peel will give notice of a motion to revise the standing orders, so far as deposits in the Court of Chancery are concerned; for it seems to us monstrous that interests so important should be permitted to suffer detriment by an obstinate adherence to an ill-expressed order, when a remedy so simple and so obvious may, without the slightest inconvenience or injury to any one, be applied.

We have said this much, because it seems the universally received opinion that these deposits *must* be made in money. The words of the standing orders, however, are by no means strong. And it may certainly admit of something more than a merely plausible argument that the Bank of England ought not to insist on cash being deposited. This, however, will probably be settled on the first night of the session.

## WINDING UP JOINT STOCK COMPANIES.

MANY of the railway companies, although well designed and respectably conducted, have been or are about to be abandoned, (at least for the present,) not in anticipation of an adverse decision in parliament, but on account of the non-payment of the deposits on shares. Indeed, if a large proportion of the shareholders, having lost their confidence in the undertaking, or finding no probability of premium in the share-market, should determine not to pay the calls, the directors cannot comply with the standing orders by paying the requisite amount..

Mr. Fitzpatrick's pamphlet on *Railway Rights and Liabilities* affords some useful information on this subject.

"In *bond fide* schemes this insufficiency of deposits need not necessarily lead to a dissolution of the company, as it is not necessary to proceed to parliament next session, and if the subscribers who have paid their deposits should desire to make an application to parliament in some future session, it may be well worth while to lie by for the present and wait till the state of affairs becomes more tranquillised; and this, particularly, where there are no rival schemes which will be prepared to submit a bill to parliament next session. It is not, however, amongst really advantageous schemes that the above-mentioned course is reported as likely to be adopted, but in those companies which have but recently allotted their shares, and a great part of the deposits on which have not been paid. It will be well for the promoters of these to consider what chance they have of complying with the standing orders, as far as relates to the deposit of their plans, &c., and whether parliament is likely to sanction their project. Should they honestly believe this to be the case, they ought immediately to give notice to allottees of their intention to compel them to take up their shares and pay their deposits. In coming to this determination, they should of course not lose sight of the probability of a successful defence on the ground of misrepresentation, if any untrue or exaggerated statements have appeared in their prospectuses. Should they come to the conclusion that they cannot successfully sue the allottees, and that there is no probability of the deposits being ultimately paid up voluntarily, there is no course for them but to dissolve the company."

A dissolution, however, cannot take place without the consent of a majority of those who have signed the partnership deed.

"The state of the accounts, and the forwardness of the surveys should be stated to them,

together with every other matter which can throw any light upon the prospects of the company. If a majority determine upon proceeding, as they will be liable for debts which may be incurred in necessities for the formation of the company and bringing its scheme before parliament, the only course for the dissentient members will be to take proceedings to obtain a dissolution of the company. As a general rule, however, where the prospect is hopeless, the subscribers will agree to the abandonment of the scheme; they, as partners in the undertaking, will of course be liable to pay their share of the expenses if sued by parties with whom the company has contracted debts, but not in general to contribute anything beyond the amount of their deposits towards the general fund, as most prospectuses limit the liability to this. Of course in the case of subscribers to the deeds none of this can be recovered *at law*, as they are members of the company; and if the expenses have been incurred *bond fide*, they must stand by the loss of so much of their deposit as is required to pay their share of the debts of the company which have been incurred since they executed the subscribers' agreement, and (in case of that deed containing a clause ratifying the past expenses, which it usually does,) so much as is required to pay their share of the whole expenses incurred since the formation of the company. Where allottees have paid the deposit upon the shares allotted to them, but have not executed the deed, they cannot be considered as partners, and will not be considered to have authorised the incurring of any expense past or future in the formation of the company. In this case, if the project is abandoned, there seems no doubt that the promoters cannot apply any portion of the money deposited by mere allottees who have not executed the deeds to paying the debts incurred by the company, as the consideration upon which it was paid has absolutely failed. The remarks of Bayley, J., in *Nockells v. Crosby*,\* are well worthy of attention. 'On all projects some expense must be incurred before many members join the concern. Upon whom should that fall? Undoubtedly, if the scheme proves abortive, it should fall upon the original projectors, and not upon those who advance their money on the faith of its going on.' This is a portion of a judgment in a case which does not apply in point of law to one where the parties advancing the money have executed deeds of the nature of subscribers' agreements, but it is for those promoters of railway companies who have taken an active part in getting them up, to consider how far in point of honour and honesty they are not bound to return even to those allottees who subscribed the deeds their deposits undiminished by any contribution towards expenses incurred in the getting up of the company. The solicitors too and the engineers should, where the scheme turns out abortive, abandon, or at any rate considerably reduce, any claim which they might have made

upon the company had it turned out a prosperous one. Certainly, if not to all the allottees, the entire deposit should be returned to those whose application being for a small number of shares only would lead to the conclusion that it was not made with a view to mere speculation.

So far the case has been considered apart from the question of a sale of any of the scrip of a company which it is agreed to dissolve; and Mr. Fitzpatrick contends that the vendors of scrip can have no voice in the dissolution of the company.

### Transfer of Scrip.

"Supposing that the sale of scrip to be within the 26th section of 7 & 8 Vict. c. 110, money paid for it could not be recovered by the vendee from the vendor, as both parties would be considered *participes criminis*, in which case the rule in *pari delicto potior est conditio defendentis* would apply.

"Should this section, as an opinion has been hazarded above, be held inapplicable to such a transaction, what will be the position of the vendee of scrip in case of a dissolution of the company?

"The case of *Kempson v. Saunders*,<sup>b</sup> has lately been laid before the public as deciding this point. The facts of that case are stated to have been, that 'the defendant sold the plaintiff twenty shares in a projected company for constructing a railroad from Birmingham to Bristol, upon each of which shares a deposit of 2l. had been paid by the original holder, of whom they had been purchased by the defendant; the committee who had framed the project and issued the scrip agreed, that *nothing should be done till the sanction of the legislature was obtained*; they afterwards abandoned the project, and no act of parliament for incorporating the company was ever obtained; upon the failure of the scheme, the plaintiff sought to recover from the defendant, in an action for money had and received to his use, the money he had paid him on account of the twenty shares in the projected undertaking. A verdict was found for the amount, on the ground that the consideration for the payment had failed.

"The defendant moved for a new trial, on the ground of the whole transaction being illegal within the Bubble Act, 6 Geo. 1, c. 18, the court held that the plaintiff had not been party to any illegal contract within the meaning of that act: it was not attempted to upset the verdict on any other ground.

There is another point deserving of serious consideration, viz., whether the vendor and vendee of scrip do anything more than buy and sell the *scrip certificates*, on which Mr. Fitzpatrick observes, that

"The only warranty implied by law in such a case would be that the scrip is genuine (i. e.

issued by the company by whom it purports to be issued, and signed by the parties by whom it purports to be signed), and that it is the property of the vendor, as in the case of a sale or exchange of a bill of exchange,<sup>c</sup> or where in a ready money transaction, a banker's cash note is given for goods.<sup>d</sup>

"The same rule would apply in case of the sale of a bond. Where goods are exchanged, there is no implied warranty.<sup>e</sup> The same rule must apply where two scrip certificates are interchanged. In the case of a ready money transaction, there is nothing more than an exchange of money for goods, no contract of debt arises between the parties,<sup>f</sup> and the necessary deduction is, that on the sale of scrip there is no implied warranty further than what is stated above. Of course, as in every other case, if fraud on the part of the seller can be shown, the money can be recovered from him; but it would be difficult to show this, except in the case of a sale by the party to whom the scrip was originally issued. If at the time of the sale by such a party, the affairs of the company of which he was a member were in such a state as to render it probable that the scheme for which it was formed would prove abortive, being a partner he would be presumed cognizant of that fact, and the money might be recovered on the ground of fraud.

"Assuming then the legality of the sale of scrip, where the scrip of a company which it is proposed to dissolve is in the market, the holders of it are entitled to receive from the committee the amount of the deposits paid upon it, less the proportion deducted therefrom in respect of their share of the expenses incurred by the company. Should the company have been completely registered, before the holder can obtain anything in respect of his scrip, he must procure it to have been transferred to him, and the transfer thereof to have been duly registered, as required by 7 & 8 Vict. c. 110."

## NOTES ON EQUITY.

### INFORMATION.—RELATORS.

WHEN the Attorney-General files an information at the instigation of relators, the proceeding is one of a *public* character. The responsible officer of the crown is supposed to have received information which he communicates to the court. And the court, acting on this information, issues its summons to the parties complained of; and upon the proper investigation, makes its decree; which decree, like the proceeding on which it is grounded, is professedly a decree *an vindictam publicam*. Such is

<sup>c</sup> *Hornblow v. Proud*, 2 B. & Ald. 327.

<sup>d</sup> *Camidge v. Allenby*, 6 B. & C. 373; *Rogers v. Langford*, 1 C. & Mee. 637.

<sup>e</sup> *La Neuville v. Nourse*, 3 Camp. 351.

<sup>f</sup> *Bussy v. Barnett*, 9 M. & W. 312.

<sup>b</sup> 4 Bing. 5.

the original theoretical conception of this method of redress in the Court of Chancery. But the circumstance of the suit being instituted by the contrivance of relators, shows, at once, that the proceeding is substantially and in fact a *private* one; and there cannot be a greater error than to forget this in advising upon proceedings of this description. A case decided in February last by the House of Lords, affords a striking exemplification of the evils which may arise from looking too much to the mere *forms* of legal machinery, without adequately considering the great substantial purposes to which those forms must ever be subservient. The case we are advertising to is that of the *Attorney-General v. Richards*, which will be found in the last number published of Messrs. Clark and Finnely's Reports, vol. 12, p. 30.

The facts were shortly these:—

In 1817, Arthur Annisley, a spendthrift gentleman of fortune, being indebted to his tailor, George Stulz, granted his bond to him for 300*l*. In 1832 Stulz died. On the 19th August 1833, his personal representative assigned this bond for valuable consideration; and from thenceforth the debt, although still remaining due to the assignor at law, became subject to a trust in equity for the benefit of the assignee. This being the case, a judgment of outlawry was obtained against Annisley in 1835; and the same was duly registered on the 31st of July 1841. A *capias utlagatum* was then issued to the sheriff of Oxfordshire, who held an inquisition pursuant thereto, on the 18th Oct. 1841; and by his return certified that Annisley enjoyed considerable property in that county, *which the said sheriff had seized into her Majesty's hands*. This return, however, was quashed on the 11th Nov. 1841; and on the 17th of that month a new writ of *capias utlagatum* was issued to the same sheriff, returnable on the 11th Jan. 1842. The sheriff accordingly held another inquisition on the 8th Jan. 1842; and on this occasion the defendant, Mr. Rickards, a solicitor, attended on behalf of Annisley, and produced to the sheriff a deed of trust, dated 27th Dec. 1841; by which Annisley demised his estates to Mr. Rickards for a term of years upon certain trusts. Upon inspecting this instrument, the sheriff made his return, certifying that Annisley "had not then any goods, chattels, lands or tenements within his bailiwick."

Here there was a state of circumstances in which all remedy would be defeated unless the Attorney-General, as the officer of the crown, could be induced to file an information in the Court of Chancery, for the purpose of obtaining on behalf of her Majesty the benefit in equity of the judgment of outlawry. What, therefore, was

the step resorted to by the assignees of the bond? It was this:—They became relators to the Attorney-General; and that officer, upon their request, filed his information praying that he, on the Queen's behalf, ~~should~~ have the benefit of the outlawry and of the writ of *capias utlagatum* issued thereon; and that the deed of trust might be declared fraudulent and void as against her Majesty.

Now this proceeding, although ostensibly public in its character and objects, would have proved peculiarly private in its actual operation; no one ever dreaming in the present day that property coming to the crown under an outlawry for a civil debt, is to be retained by the crown and appropriated to regal purposes to the injury of the outlaw's creditors. The interposition of the Attorney-General is, in fact, intended to serve no other end than this; viz. to enable the private party to have the benefit of his own diligence, undefeated and unaffected, by an instrument which, in this case, was evidently meant to deprive him of a preference to which, by law, he would otherwise have been entitled. Accordingly the information was no doubt drawn by counsel employed by the private party, although purporting to be filed, and in fact being filed, by an officer of the state.

This preliminary explanation will enable us to appreciate the frame of the information thus prepared, for the entire litigation—beginning at the Rolls—carried thence to the Chancellor, and finally adjudicated upon by the House of Lords—turned, not upon any *merits* in question between the parties, but solely and exclusively upon the frame of the information; and the simple point to be decided was, whether a certain allegation was or was not *impertinent*;—that is to say, irrelevant to the matter in hand.

The information, after asserting that the sheriff's last return (containing the negative certificate to which we have referred) proceeded entirely on the supposed effect and operation of the said deed of trust, and alleging that the same was fraudulent and void as against the crown, stated, "That the said indenture was devised and contrived with intent to defraud the creditors of the said Arthur Annisley of their just and lawful actions, suits, debts, and demands, and in particular to defeat the debts secured by the said bond." The information further stated, "That the said Arthur Annisley was residing in the sanctuary of Holyrood House at Edinburgh, for the purpose of avoiding his creditors; and that he was in very embarrassed circumstances, and indebted in large sums which he was wholly unable to pay."



Exceptions were filed to these allegations for impertinence, and were allowed by the master; but the Attorney-General excepted to the master's report, and his exception was allowed by Lord Langdale. In other words, Lord Langdale held, that the allegations were not impertinent, and refused to expunge them. This decision, upon an appeal to the Lord Chancellor, was confirmed; but the parties being still unsatisfied took a further appeal to a last resort.

On behalf of the appellants it was argued, that the passages in the information to which exceptions were taken were wholly immaterial, inasmuch as they could in no way aid or affect the relief prayed for; which relief, they contended, had nothing to do with the rights of the creditors, but was exclusively confined to the interests of the crown. The information sought to recover property for the crown. The alleged fraud upon the creditors effected by the trust deed, would have been a proper subject of allegation in a *bill* praying relief against the transaction, but could not, without impropriety, be introduced in an information to enforce the rights of the crown. The relief sought was single and ought to be a logical consequence of the premises set forth; whereas, this information stated matters not necessarily leading to the consequence which it was sought by its prayer to establish. The appellant's counsel insisted, that the rule in equity was to strike out every immaterial statement before the hearing of the cause; so that the judge's mind might not be distracted by irrelevant or extraneous matter; and upon the whole they urged that the house, by reversing both judgments complained of, would maintain a wholesome rule of pleading.

Notwithstanding the ingenuity and plausibility of these arguments, it appears that their lordships were but little moved by them; for they did not even call on the respondent's counsel to answer them, but decided the case off hand upon principles thus expounded by the law peers, of whose observations we give, in the order of their delivery, the following brief summary:—

Lord Brougham, said, the question was a very important one. If he had seen that there was no possible connexion between the matter alleged to be impertinent and the allegations admitted to be proper, he should then have been of opinion that the case came within the rule, which is followed in courts of equity, to strike out beforehand matter clearly impertinent. But it would not be enough to justify the expunging of matter alleged to be impertinent merely that the court did not see how the allegation would bear upon the case ultimately. The impertinence must be proved. He listened with great favour to the appellant's argument at first. But it was impossible before the hearing to anticipate, with any approach to certainty, whether this allegation would be material or not.

Lord Campbell thought it was a useful prac-

tice in courts of equity to strike out of pleadings matter clearly immaterial. But looking at this information he held it impossible for any one to say, that the immateriality of these allegations was self-evident. It was true the Attorney-General might file his information without any relators. Nevertheless, courts of equity did look to relators; and though they did not decide upon the interest of relators; they always looked to see who the relators were; and when informations were improperly filed, they ordered relators to pay costs.

The Lord Chancellor said, it appeared to him convenient that the nature of the interest which the relators had should be set out on the record, for this important purpose, viz., that upon the apportionment of costs, in case the information should fail, the court might have an opportunity of making those parties pay the costs who were beneficially interested in the property. Where there was a fraudulent transaction, was it not proper that all the circumstances connected with that fraud should be stated on the record? And could it be said that any of these circumstances so stated, giving the history of the fraud, were immaterial? The motives for the fraud are often a most relevant subject for inquiry. Now, the information here assigned two motives for the fraud; one was to defeat the process of the crown, the other to defeat *bond fide* creditors. Actual fraud might be proved on this information when it came to a hearing—a declaration made by the party stating that his object was to commit a fraud. Express fraud would vitiate a deed at common law. If a deed were executed with the express object of defeating creditors, this would be sufficient to set it aside at common law. He was, therefore, of opinion, as he had said in the court below, that it could not be considered in that stage of the cause that those facts were immaterial. He therefore moved, (the other lords concurring,) that the orders complained of be affirmed with costs.—Agreed to.

The applicant's counsel then asked leave to demur.

Lord Brougham.—“No; you have elected one course, and when that fails you are not to fall back on another.”

## CASES IN BANKRUPTCY.

### JURISDICTION OF BANKRUPT COMMISSIONER AS TO COSTS.—POWER OF COMMITMENT.

It does not indicate a very advantageous progression in the science of legislation, when we find that particular branch of the law which has of late years been more peculiarly the subject of legislative interference, that which is least satisfactory in its administration. We apprehend, however, that this may be safely predicated with respect to the Law of Bankruptcy and Insolvency, which the crude and ill-considered attempts to amend have

left in a state that affords neither satisfaction nor security to those concerned in its administration.

This observation is suggested and illustrated by a case which will be found in the number just published of the Reports of Cases in the Court of Exchequer,<sup>a</sup> where an inferior officer of one of the District Courts of Bankruptcy was held to be liable, in an action of trespass, for acting under an order of the commissioner, and detaining the plaintiff until he had paid certain costs, the Court of Exchequer being of opinion, that the commissioner had no jurisdiction to make such an order.

The facts of the case were shortly as follow :—

A fiat in bankruptcy having issued against Messrs. Goddard, bankers, of Market Harborough, the plaintiff, who was a debtor to the bankrupt's estate, was summoned to attend and give evidence as a witness before the Birmingham District Court of Bankruptcy, and upon his refusal so to do, the commissioner issued a warrant<sup>b</sup> to the defendant, who was the messenger of the court, authorising him to arrest the plaintiff and bring him before the court to be examined. The plaintiff was accordingly arrested and brought before the commissioner for examination. The plaintiff then duly submitted himself to examination; and at the conclusion of his examination, the commissioner said he was discharged, upon payment of the costs incurred in bringing him up, and a memorandum to that effect was indorsed on the warrant, but the commissioner's seal was not affixed to the memorandum. The messenger to whom the warrant was directed refused to permit the plaintiff to depart until the costs were taxed and paid, and after a detention of about an hour and a half, the plaintiff paid 8*l.* 10*s.* for the costs, under a protest, and was then discharged.

The learned judge who tried the cause<sup>c</sup> being of opinion that the plaintiff's detention was illegal, he had a verdict subject to the opinion of the court.

In argument on the rule to show cause why the verdict taken for the plaintiff should not be set aside and the verdict entered for the defendant, it was contended, in support of the rule :—1st. That the commissioner had power to order the plaintiff to pay costs, and to detain him until such costs were paid. This power, it was said, the commissioner derived from the stat. 5 & 6 Vict. c. 122. s. 69, which enacts, that it shall be lawful for the court authorised to act in the prosecution of any fiat in bankruptcy, to award such costs as to such court shall seem fit and just, "and in all cases in which costs shall be so awarded against any

person by any such court, it shall and may be lawful for such court to cause such costs to be recovered from such person in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered, and that the like remedies may be had upon an order of such court for costs, as upon a rule of any of the said superior courts for costs." The commissioner having authority, it was argued, under this section, had ordered the plaintiff not to be discharged until the costs were paid, and the defendant, who was an officer of the court, was not at liberty to discharge him until that condition was complied with. 2ndly. It was contended, that the commissioner had a general jurisdiction under the Bankrupt Acts to order the payment of costs in all proceedings before him; and having such general authority over the subject matter, if he exceeded the authority in this particular instance, the officer was protected, and was not driven to discuss the propriety of the order made by the commissioner.<sup>d</sup> It was also submitted, on behalf of the defendant, that the original warrant on which the plaintiff was brought up in custody was not spent, but continued in force at least until the court rose. In answer to these arguments, it was replied on behalf of the plaintiff, that the commissioner had no more power to order a witness to be detained until costs, the amount of which were not yet ascertained, had been paid, than to order him to be hanged or tortured until such payment. As to the officer being protected by the order of his superior, it was said, he was only bound to obey the lawful orders of his superior, and must notice at his peril the extent of the commissioner's authority. It was also contended, that as soon as the plaintiff was brought up and submitted to be examined, there was an end of the warrant and all authority derived from it, and that the memorandum endorsed on the warrant was not equivalent to an order of the commissioner to detain the plaintiff until the costs should be taxed and paid.

In the course of the argument, the court distinctly intimated its opinion, that the operation of the warrant, as a legal cause of detention, was exhausted as soon as the plaintiff submitted to be examined, and, consequently, that the defendant was not justified in detaining the plaintiff under the warrant after that time; but the court also thought, that when the commissioner directed the plaintiff to be discharged on payment of costs, that order imported that he was not to be discharged until the costs should be taxed and paid.

The argument which seemed to press most strongly on the court, and on which its judgment chiefly proceeded was, that the commissioner acted within the scope of his jurisdiction, and would not be liable himself to an action of trespass, and therefore that his officer,

<sup>a</sup> *Watson v. Bodeil*, 14 Mees. & W. 57.

<sup>b</sup> Under stat. 6 Geo. 4, c. 16, s. 33.

<sup>c</sup> *Coltman, J.*

<sup>d</sup> Citing *The Marshalsea Case*, 10 Rep. 76; *Ackerley v. Parkinson*, 3 M. & Sel. 411; *Moravia v. Sloper*, Willes, 30; and *Weller v. Toke*, 9 East, 364.

acting under his direction, was not liable in that form of action.

After consideration, the unanimous judgment of the court was pronounced by *Parke, B.*, who stated, that the court was clearly of opinion that the commissioner had no power to make such an order as that on which the defendant acted, and that the plaintiff must have been discharged from custody on a return to a writ of *habeas corpus* stating the fact correctly. It was a different question, however, whether the commissioner would have been liable in an action of trespass. The stat. 5 & 6 Vict. c. 122, s. 66, gave the Court of Bankruptcy all the rights, privileges, and incidents of a court of record, so that the jurisdiction of the commissioners to commit for a contempt, admitted of no doubt. It was conceded, however, that this was not the case of a commitment for contempt, but it was said to be a commitment by a court of record, having jurisdiction over the person of the plaintiff and over the subject matter, which, though wrongly done, did not make the judge liable in trespass.\* The court, however, thought that the order in question was not within the scope of the special jurisdiction given to the commissioner by the Statutes of Bankruptcy, and as he had not a common law jurisdiction, he had no other power than that which the statute gives, or which was a necessary incident to that power. Had this been a commitment for a contempt, however improper, the commissioner would not have been liable in trespass, because he had a general power to commit for contempt. So, though the costs might be improperly given to one party, there would be no redress by action of trespass for levying them in the proper mode, inasmuch as the determination of the question whether costs were to be paid, was within the jurisdiction of the commissioner. In like manner, if the statute had given a general power to levy costs in such manner as the court should think fit, no action of trespass would have been maintainable for acting upon an order directing immediate imprisonment until the costs were ascertained and paid. No such general power, however, was given by any of the statutes to the commissioners of bankrupt. The 5 & 6 Vict. c. 122, s. 69, directed that the costs awarded by the Court of Bankruptcy should be recovered in the same manner as costs awarded by rule of any of the superior courts at Westminster.† As neither the power to award costs, nor the office of commissioner of bankrupt, was known to the common law, but both depended on the

statute law; and as no other power was given by the statute than that already referred to, that authority should have been pursued. The commissioner had no other power to enforce the payment of costs than that given by the statute, and in the mode there prescribed: he had not pursued the course there pointed out, and consequently the court thought the order in question was without jurisdiction, and void. If this were so, the defendant, who must be assumed to have known the law, knew the invalidity of the order, and could not be protected by it. Upon these considerations, the rule for entering a verdict for the defendant was discharged, and judgment entered for the plaintiff.

We entertain no doubt that the judgment of the Court of Exchequer in this case is based on sound legal principles; but the assumption that the messenger, who is somewhat in the nature of a bailiff, must have known the invalidity of the order made by the commissioner, is one of those legal fictions which startle the common sense of mankind, and must be placed in the same category with that pointed out by a facetious contemporary, when he states that every man, woman, and child in Great Britain is bound to know the provisions of every statute. Much better that the jurisdiction of the commissioners should be so clearly defined as to prevent them from making invalid orders.

## INTERNATIONAL LAW.

### OBSERVATIONS ON THE BARON DE BODE'S CASE.\*

*To the Editor of the Legal Observer.*

SIR,—THE case of the Baron de Bode, in which judgment was lately given by the Court of Queen's Bench against the claimant, has attracted not less attention on the continent than in England. Besides the practical application of the law of nations as it resulted from the treaty of Westphalia, and the subsequent treaties between the European powers based upon it, it brings before us the municipal laws of three great countries, England, Germany, and France, and the peculiar conflict of laws it displays, renders it one of the most interesting international cases that has ever been decided by a court of justice: indeed, it is rather an European than an English case. For these reasons, and as having been concerned in the case as one of the foreign advocates who, at the trial at the bar last year gave evidence on the foreign laws, I am sure you will pardon my offering for insertion in your valuable publication a few observations on some points of international law which the case presents to view.

\* In addition to the cases cited at the bar on this point, the learned Baron mentioned *Hammond v. Howell*, 1 Mod. 184; and *Taffe v. Downes*, 3 Moore's P. C. C. 36.

† Alderson, B., observed, in the course of the argument, that if the superior courts ordered a man to pay costs, they were first taxed, and then demanded from him, and upon his refusal to pay he was attached. But here he was attached in the first instance.

\* See p. 189 ante.

I of course assume that Lord Denman [for whom every one feels the highest respect] has, in his judgment, strictly applied the English law, and as far as can be collected from the newspaper reports of it, the principal grounds in an international point of view, on which the court refused to give judgment for the claimant, are these:—That by the treaties of 1786, 1814, and 1815, a British subject whose property had been confiscated during the French Revolution or detained in France, could only claim indemnification, in case such confiscation or detention was contrary to the laws of France; that from the facts, as alleged by the baron and found by the jury at the trial at bar, the court could not collect that the property had been “*unduly or illegally* confiscated;” that by the baron’s own showing it, on the contrary, appeared that the confiscation had taken place by the adjudgment of some French tribunal for the claimant’s emigrating to, or rather taking refuge in the Austrian army whilst the latter was invading the soil of France; the baron’s birth could not make him so much a British subject as not to be amenable to French law, which would be inconsistent with the principles of local allegiance; that there was no complaint made of this being *unlawfully* enforced by the tribunal, though even if there had been, the Court of Queen’s Bench could not sit as a court of error on points of French law, or as a court of appeal for the revision of sentences of a French tribunal.

It appears to me that the above argumentation is based on a misconception of the meaning of some important expressions in the treaty of 1814.

The words of the 4th additional article of the treaty of 30th May 1814, between Great Britain and France, which principally concern the Baron de Bode’s right to indemnification, are, “*induelement confisques*,” unduly confiscated. The judgment of the Court of Queen’s Bench interprets this term as if it had the same meaning as “*illegally confiscated*,” and bases on this the proposition, that the Baron de Bode had neither shown that he had done no illegal act to justify the confiscation, nor how the Court of Queen’s Bench could sit as a court of error on appeal over a French tribunal.

A foreign lawyer may well be permitted to ask—is English forensic language so vague and illegal as to confound the meanings of the words illegal and undue! It is true, that in the English translation of the 4th additional article of the treaty of 1814, (which translation is, as far as I understand, an official one,) accompanying the papers when laid before parliament, the words “*induelement confisques*” were rendered “*illegally confiscated*.” But the Court of Queen’s Bench appears to have been well acquainted with the words in the original, since in the judgment both the words unduly and illegally are used without distinction, as having one and the same meaning.

I apprehend that the word illegally (*illegalement*) was intentionally not used in the 4th article of the above convention, but the word

“*induelement*,” which is very far from meaning the same thing. Could the governments that were parties to the treaties of 1814 and 1815, by which the war against the French revolution was terminated, intend, that any one of the confiscations inflicted by the public authorities of revolutionary France should be legal in the true sense of the word, incurring thereby the necessary inference, that the acts of the revolution were regarded as legal by the very governments who had fought so many battles against revolutionary France, and were then on the point of restoring to her the old order of things? Supposing that the words “*unduly confiscated*” were not a mere diplomatical phrase, but that they were given to convey some particular meaning, this meaning and the sense to be ascribed to them can amount to nothing more than to afford some guarantee to France, that on the part of England no wanton claims of indemnification should be raised—no claims which were not justified by circumstances.

The French confiscations for emigrating, in order to evade the working of the revolution and its dangers, had more the nature of political measures against those who were opposed to the principles of the revolution, than of judicial proceedings for offences against the laws of France. In the eyes of the parties to the restoration, by whom the conventions of 1814 and 1815 were concluded, the confiscations can never have appeared in the character of legal acts. This cannot have even been the case with respect to Frenchmen who owed natural allegiance to their sovereign, how much less then with respect to foreigners, who as mere *subditi temporarii* owed only temporary obedience to French laws, during the time of their actual residence in that country, who were under no obligation of positive law whatever to fight for the revolutionary government, but who might leave the country and go wherever and whenever they pleased.

The Baron de Bode is no Frenchman, and could offend against no French law by leaving France and seeking refuge in the Austrian army. His allegiance to the French sovereign power was no other than that of any other foreigner. His being the owner of a landed estate within the territory of France, made no change in that respect, for the possessing landed property does not in itself, according to the law of the continental states, constitute allegiance. By the law of almost all continental states, foreigners may own landed property, but their position with respect to the government is not affected by such ownership, it remains the same as that of other foreigners. A foreigner possessing landed property is bound to plead to all real actions and answer other claims concerning the estate, but in all other respects he only owes obedience to the laws of the country for the time of his residence there. But the Baron de Bode stood as a member of the German immediate nobility in a peculiar position, which rendered him yet less than the generality of foreigners dependent on French law.

His Lord Paramount was the Archbishop of

Cologne, and he possessed the privilege of his estate though lying within the territory of France not being subject to French law. He had that privilege by the treaty of Westphalia, that is to say, *the positive law of nations*; the independence of the immediate German nobility possessing estates in Alsace from the sovereign power of France having been guaranteed by all treaties between the European powers, from the treaty of Westphalia to the French revolution. Certainly no other English born subject who possessed property in France, stood in so favourable and exceptional a position with respect to French law as the Baron de Bode, and if the confiscation of his property was not "*undue*," then I do not know what other confiscation of English property could have been so.

The Court of Queen's Bench maintains, that it has no right to sit as a court of error or appeal over a French tribunal. The correctness of this principle cannot be denied, and ought to constitute a part of the municipal law of all nations. It certainly is most objectionable to find the courts of justice of some of the continental states, especially of France, arrogating to themselves the authority of sitting as sorts of courts of appeal over foreign sentences. From that principle, as laid down in the judgment of the Court of Queen's Bench, it does not, however, in the least follow, that a court is bound to *acknowledge and uphold* all foreign sentences without distinction, which may be alleged by parties in actions at law. This would, indeed, be a novel principle in the law of nations. On the contrary, it must be regarded as a general rule of the law of nations, that no state will execute or impart any validity within its territory to a sentence, by which one of its own subjects has been grossly injured. By acknowledging this principle, and declaring, that the Baron de Bode had, by the confiscation of his property, been grossly injured in his rights by a French tribunal, the Court of Queen's Bench would not have in the least assumed the authority of a court of error or appeal over a French sentence.

Concluding these few observations on that part of the judgment of the Court of Queen's Bench which principally relates to international law,

I have the honour to be,  
Your obedient servant,

C. GAERTH.

9, Essex Street, Strand, Dec. 29, 1845.

### MEETINGS OF LAW SOCIETIES.

On the 7th instant the *Provincial Law Societies Association* held its annual meeting at Manchester, and the *Manchester Law Society* also assembled on the same day. We are precluded this week from stating the whole of the reports which were made and the proceedings which took place at these respective meetings. We shall find space, however, for the substance of one of the reports, and in the next number shall give the other,

The remarks on the bills for altering the law in the last session of parliament will attract considerable attention,—emanating as they do from large bodies of professional men, well qualified to form an opinion on these subjects, and entitled to speak the sentiments of the country solicitors in general. For the present we give the following extracts from the Provincial Association Report:—

"Your committee do not consider it necessary to report in detail on the several *parliamentary measures* which have required their attention during the past year, as they have been very numerous, and of a very various character. They consist principally of the clerks at petty sessions—assignment of outstanding terms—ecclesiastical courts—marriage law amending—documentary evidence—real property conveyancing—granting of leases—declaratory suits—and registration of real property bills.

"To all these projects the best attention of this committee has been paid, and they have been successively dealt with, as their merits and the state of maturity of the bills in which the various alterations of the law were embodied appeared to require. Every endeavour has been made in each instance to ascertain, through the machinery of the association, the general sentiments of the profession.

"Your committee cannot avoid congratulating the members in general, that it has not been considered necessary, during the past year, to call forth the power and influence of this society in opposition to the passing of any particular measure, for although many bills affecting the profession were introduced during the last session, but few had any possibility of being passed into law; and of these few, none, in the opinion of your committee, were calculated to interfere with the interests of the profession generally.

"Your committee cannot pass over this subject without calling the attention of their successors in office, in particular, to two measures before alluded to, and which, in all probability, will be again introduced during the forthcoming session of parliament, viz. 'The Ecclesiastical Courts, and Lord Campbell's Real Property Registration Bills.' Both these measures are of the greatest importance, and deeply affecting the interests both of the profession and the public, and they will require, and no doubt receive, the calm and careful consideration they so imperatively demand.

"One important branch of the objects of the association was, to afford an appeal on *disputed points of practice*. Your committee have, during the past year, been called upon to enter on this class of their duties, and the result has strengthened their previous impression of its necessity and value."

The Report of the Manchester Law Association enters somewhat fully into the measures of the last session, and the projected changes which will doubtless soon be renewed.

## CANDIDATES WHO PASSED THE EXAMINATION.

MICHAELMAS TERM, 1845.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Andrews, Richard Bullock, jun.	Richard Bullock Andrews, sen., Epping
Appleyard, James	Thomas Dobson Bleaymire, Penrith
Atherton, Isaac	John Shaw Leigh, Liverpool
Atkinson, Henry	Fenton Robinson Atkinson, Manchester
	Thomas Sanders, 3, Elm Court, Temple
Bartlett, William Robert	Robert Bartlett, Reading
Belyse, Frederick Chetwode Hoskins	George Harper, Whitechurch
Bernard, Edward Westland	George Cooke, Clifton
Berry, William	Michael Smith, 5, Berners Street
Bird, Charles	Robert Owston, Glamford Briggs
Bird, Andrew Davies	Edwin Ward Scadding, 3, Gordon Street, Gordon Square.
Blount, Charles John	Henry Mostyn, Usk, Monmouth
Booker, Augustus	Stephen Williams, 16, Bedford Row
Brewis, George	George Tallentire Gibson, Newcastle-upon- Tyne
Bridges, Nathaniel	Nathaniel Mason, 23, Red Lion Square
Brown, Charles	James Smith, Maidenhead
Buck, Charles	Thomas Swainson, Lancaster
Burbury, Daniel Winter	Jackson Walton, Warnford Court
Burnley, John Wild	Anthony Burnley, St. Austell, Cornwall
	David Laing, White Hart Court, Lombard St.
	Peter Ashwell Burrell, 1, White Hart Court
Cavell, Edmund	Alexander Cavell, Saxmundham, Suffolk
Chambers, Gregory Thomas	Nathaniel Mason, 23, Red Lion Square
Charley, Edward	Francis Carter, Coventry
Child, Henry Baylis	George Kennet Pollock, 19, Gt. George Street, Westminster
Coldicott, Henry	William Fellowes, jun., Dudley
Costerton, Charles James	Francis Riddell Reynolds, Gt. Yarmouth
	John Murray, 7, Whitehall Place
Cotton, Edward	Samuel Stone, Leicester
Cox, George, jun.	George Cox, 14, Sise Lane
Cudworth, John William	Richard Ecroyd Payne, Leeds
Cunliffe, Robert	Thomas Potter Cunliffe, Manchester
Dabbs, John	Thomas Heydon, Warwick
Davies, Robert Pavia	Henry Hayman, Bath
	Daniel Davies, Warwick Street, Regent St.
Dollman, Francis	Robert Henry Sawyer, Staple Inn
Driver, Samuel Neale	Edward Hugh Edwards, New Palace Yard
	Owen Pape Holmes, 6, Liverpool Street
Duffett, Joseph Gibbs	Daniel and William Baynton, Bristol
Farr, Henry Fuller	Henry Hansell, Norwich
Feld, John Joseph	William Kinsey, 20, Bloomsbury Square
Fisher, William Richard	John Goate Fisher, Gt. Yarmouth
Fox, Frederic	George Durrant, Surrey Street
Gell, Inigo	Francis Harding Gell, Lewes
	Francis Thomas Gell, Carlton Chambers
Gotobed, Henry	Samuel Blackman Lamb, Reading, Berks
	Wm. Tooke, 39, Bedford Row
Graham, James	Wm. Nauson, Carlisle
Gregory, William	Jonas Gregory, 12, Clement's Inn
Griffiths, William Higford	John Rodd Griffiths, Chipping Campden
Hanson, William Stonehewer	Edward Richard Comyn, 23, Bush Lane
	Henry Shephard Law, Bush Lane
Hardwicke, Eugene	Henry Saunders, Kidderminster
Harmer, Henry Robert	John Baker, Gt. Yarmouth, Norfolk
Hodgetts, Thomas	Clement Ingleby, Birmingham
Holland, Richard David	William Bolton Girdlestone, Southampton
	Roger Gadsden, Furnival's Inn
	Richard Seaton Wright, 15, Golden Square

Holmes, Joseph Francis . . . . .	Thomas Shepherd, Beverley
Howell, David . . . . .	Hugh Davies, Machynlleth
Huddleston, John . . . . .	Wilson Perry, Whitehaven
Hughes, William Henry . . . . .	Samuel Edwardes, Denbigh
Ind, Robert Laundry . . . . .	Henry Bradley, St. Andrew's Hill, Cambridge
Ingleby, Christopher . . . . .	Roger Moser, Kendal
Jarvis, Richard Taylor . . . . .	Bowyer Newburn, 9, Gt. Winchester Street
Jevons, William Alfred . . . . .	Wm. Llewellyn, Neath
Jones, Thomas Alley . . . . .	Thomas Eden, 3, Salisbury Street, Strand
	George Becke, 21, Lincoln's Inn Fields
Jones, John Alexander . . . . .	Lewis Henry Braham, 101, Chancery Lane
Keyes, Robert James . . . . .	George Wood, Rochford
	Thomas Wood, 2, Corbet Court, Gracechurch Street
Knight, William . . . . .	Henry James Damant, Tamworth
Little, Edward Carruthers . . . . .	George Edwards, Strand
Lodge, James . . . . .	John Lodge, Lancaster
	Wm. Charnley, Preston
Long, Robert, jun. . . . .	Charles Henry Binsteed, 4, Parade, Portsmouth
	John Long, 56, Clarendon Square
Low, Edwin . . . . .	Archibald Low, Portsea
Lyde, Thomas . . . . .	Thomas Graham, Mitre Court Chambers
MacGregor, James . . . . .	Wm. Bolton Girdlestone, Southampton
	Richard Seaton Wright, 15, Golden Square
Macnamara, James Robert Shakspeare . . . . .	William Henry Barber, 21, Tokenhouse Yard
	Charles Fortesque Tagart, Raymond Buildings
Marshall, Joseph . . . . .	Thomas Thompson, Kingston-upon-Hull
Mason, Augustus . . . . .	Francis Ommanney, 6, Basinghall Street
	Francis Edwards, Gray's Inn
Mason, Henry . . . . .	George Herbert Kindersley, 6, New Square, Lincoln's Inn
Merryweather, John . . . . .	George Dew, Salisbury
	Matthias Thomas Hodding, Salisbury
Murdoch, John . . . . .	Thomas Randall, Castle Street, Holborn
Myers . . . . .	Ayrton Gatliff, Leeds
Neate, John . . . . .	Richard Nation, 4 A, Orchard Street
Nettleship, William . . . . .	Daniel Calver, Stenninghall, Norfolk
Newington, Alexander Thurlow . . . . .	Wm. Pain Beecham, Hawkhurst
Nicholson, Henry . . . . .	Henry Robert Burfoot, King's Bench Walk
	Richard Raven, King's Bench Walk
Nicks, Thomas . . . . .	George Matthew Paget Kitchin, Warwick
	John Bass Hanbury, Leamington Priors
Oldacres, Robert John Francis . . . . .	Wm. Palmer, Leicester
Oldershaw, Robert Piggott . . . . .	Robert Oldershaw, 18, King's Arms Yard
Oldham, Frederick Jennings . . . . .	Wm. and John Walker, of Spilsby
Palmer, William . . . . .	Henry Godwin, Newbury
	Edward Smith Bigg, Southampton Buildings
Parker, Robert John . . . . .	Thomas Motley Weddall, Selby
Petherick, William . . . . .	Richard Haynes, jun., 2, Hunter St., Brunswick Square
	Frederick Green, 10, Angel Court, Throgmorton Street
Pope, John . . . . .	Wm. Rodham, Wellington
Riley, John . . . . .	Joseph Foster, Wolverhampton
Rodham, Thomas . . . . .	Wm. Rodham, Wellington
Roxburgh, John Pirie . . . . .	Robert Ellis, 2, Cowper's Court, Cornhill
Salt, George Moultrie . . . . .	Thomas Salt, Shrewsbury
Salter, William . . . . .	Henry Dawbney Harvey, Chard
Sawtell, George Henry . . . . .	John Teesdale, 31, Fenchurch Street
Scotland, William Humphrys . . . . .	John James Joseph Sudlow, sen., Chancery Lane
	Jeremiah Briggs, Market Place, Leicester
Sculthorpe, William . . . . .	Charles Arrowsmith, jun., 40, Devonshire St., Queen Square
Shotton, James George . . . . .	Henry Harris, Cainscross
	Wm. Smith, Nailsworth
Smith, Francis . . . . .	Horatio Barnett, Walsall
Smith, Francis Henry . . . . .	Joseph Williamson Westmorland, Wakefield
Southern, Francis Richard, jun. . . . .	
Taylor, Thomas, jun. . . . .	

Teesdale, Frederic Symes . . . . .	Edmund Barlow, 26, Essex St., Strand
Thornely, James . . . . .	John Coles Symes, 31, Fenchurch St.
Towsey, Edward . . . . .	George James Duncan, Liverpool
Turner, Albert . . . . .	John Williams, 1, Verulam Buildings
Violet, William Brookman . . . . .	Charles Bettesworth Hellard, Portsmouth
Ware, Charles Taylor . . . . .	Emanuel Wm. Violet, Barnwell, Somerset
Warry, Ellis Taylor . . . . .	John Bridges, 23, Red Lion Square
	Robert Loosemore, Tiverton, co. Devon
	Edmund Wm. Paul, Bamfylde St., Exeter
	Edwin Newman, Yeovil
White, George . . . . .	John Waite, 8, Welbeck Street
Wilkins, William Henry . . . . .	Richard Boswell Beddome, 27, Nicholas Lane
Willatts, Frederick George . . . . .	Thomas Lovegrove, Reading
Winfred, William Anthony . . . . .	Charles Addis, Gt. Queen St., Westminster
Wingfield, Philip James . . . . .	Frederic Vallings, 2, St. Mildred's Court
Wreford, John, jun. . . . .	John Geare, Exeter
	Henry Wm. Sole, 68, Aldermanbury

[This list was omitted last month, and is now inserted at the request of several subscribers.]

### ATTORNEYS' ADMISSIONS.

*Last day of Hilary Term, 1846, pursuant to Judges' Orders.*

#### Queen's Bench.

<i>Clerk's Name and Residence.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Borton, William Joshua, 11, Bell Yard, Lincoln's Inn; Everett Street; Deddington	William Henry Hitchcock, Deddington.
Beverley, John, 8, Amwell Terrace, Pentonville; Burnley	Henry Alcock, Skipton.
Hardman, Alfred Lloyd, Chorlton-upon-Medlock	James Roberts, Manchester.
Willatts, Frederick George, 13, Gray's Inn Square; Reading; Carey Street	Thomas Lovegrove, Reading.

[The List of Admissions for Easter Term will be given in due time.]

### APPLICATIONS FOR RENEWAL OF CERTIFICATES.

*On the last Day of Hilary Term, 1846.*

#### Queen's Bench.

Abbs, Cooper, Newcastle-upon-Tyne.	Lake, Thomas, Effra Road, Brixton.
Bulmer, George, 44, Parliament Street, and Chelsea.	Monkton, John, 46, Upper North Place, Gray's Inn Road.
Carter, Joseph, 15, Darlington Place, Southwark Bridge Road.	Miller, James, Croydon; Earl's Terrace and South Parade, Brompton; and King's Parade, Chelsea.
Chilton, James, 5, Dalston Place, Dalston.	Moore, George James, 9, Bell Yard, Doctors' Commons; Jernyn Street, St. James's; and Whitecross Street Prison.
Driver, William, Weston Street, Southwark.	Powell, Horatio Nelson, Cheltenham, Shadwell, Alfred Hudson, Barn Elms.
Dickenson, Edward Tayleure, Stone.	Shillibeer, Henry Webb, Taunton.
Dawson, John James, 7, Duke Street, Lambeth.	Smedley, John Benjamin, 4, Harpur Street, Red Lion Square; Staples Inn; and East Street.
Edwards, Samuel, Spalding.	Tucker, Andrew, Ipswich.
Edwards, Thomas, 37, Noel Street, Islington.	Turnley, Jos., 29, Lower Belgrave Street, and Upper Eaton Street.
Foulkes, John Faulkener, Monton Green, Eccles.	Walker, John, Axbridge.
Hilton, William, jun., Danbury.	Whateley, David, Settle.
Harding, John, Manchester.	Wilson, William Henry, 3, Granby Street, Hampstead Road, and Upper Park Street.
Jessop, Edward, Small Heath, Acton, near Birmingham, and Balsall Heath, King's Norton.	
Johnson, William, Liverpool.	
Knightley, William, 47, Ossulton Street, Upper Seymour Street, Ferdinand Terrace.	



## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.

[In our last number, p. 209, we commenced the Digest of Cases reported since the 1st Nov., and completed the analysis of all the decisions on the Doctrines or Principles of Equity. We now give the Points reported during the same period, on Equity Pleading and Practice. We shall class the Common Law cases in the same order, except that perhaps it will be useful to separate those which relate to the Construction of Statutes and the Rules of Evidence, from those on Common Law Principles.]

The Ecclesiastical and Appeal Cases will probably come in the present, and the Common Law in the next month.]<sup>a</sup>

## II. Pleadings in Equity.

## ABATEMENT OF SUIT.

The defendant in an abated suit is not entitled to deal with the subject of the suit in contravention of orders made in the cause before abatement; the proper course for the defendant in such a case is, to apply to the court that the bill be dismissed in default of revivor by the proper parties within a certain time; or that he may be at liberty to act notwithstanding those orders; or himself to revive the suit and proceed in it. *Fisher v. Fisher*, 4 Hare, 196.

Case cited. *Lee v. Lee*, 1 Hare, 617.

## ANSWER.

1. Exceptions for insufficiency were overruled, under the 38th Order of August 1841, on the ground that the bill was defective for want of parties. The plaintiff then added the necessary parties by amendment, and the defendant answered the amendments only; *Held*, on exceptions, that the defendant in such a case must answer not only the interrogatories added by amendment, but those in the original bill which had not been answered.

On the reference of an answer for insufficiency, if the master's report be not made within a fortnight, and the master does not, within that time, certify that he enlarged the time for making the report, the report afterwards made on the same reference will, under the 12th General Order of 1828, be irregular.

It is not material whether the certificate of enlargement of time be filed or not, — *semble*. *Kaye v. Wall*, 4 Hare, 283.

Cases cited: *Taylor v. Wrensh*, 9 Ves. 315; *Partridge v. Haycroft*, 11 Ves. 570; *Mazaredo v. Maitland*, 3 Madd. 66; *Orev v. Leighston*, 2 Sim. & St. 35; *Miller v. Wheatley*, 1 Sim. 296; *Glassington v. Thwaites*, 2 Russ.

<sup>a</sup> It may be proper to repeat to some of our readers, that this is a continuation of the Quarterly Digest, published for fourteen years, and now incorporated with the *Legal Observer*.

458; *Taylor v. Bailey*, 3 Myl. & Cr. 677; *Duncombe v. Davis*, 1 Hare, 193; *Tipping v. Clarke*, 2 Hare, 383; *Drake v. Drake*, ib. 647; *Fairtherne v. Weston*, 3 Hare, 387; *Woods v. Woods*, ib. 411.

2. Liberty given to file a supplemental answer to correct a date in the original answer.

On such an application, the defendant must account for the mistake, and the truth of the proposed answer, and the terms in which it is intended to file it, must be verified. *Bell v. Dummore*, 7 Beav. 283.

Cases cited: *Strange v. Collins*, 2 Ves. & B. 163; *Tidwell v. Bowyer*, 7 Sim. 64; *White v. Sayer*, 5 Sim. 566; *Greenwood v. Atkinson*, 4 Sim. 54; *Haslar v. Holtis*, 2 Beav. 236; *Smith v. Hartley*, 5 Beav. 452; *Whitcombe v. Minchin*, 1 Wilson, C. C. 1.

## BILL.

1. *Amendment*. — The answer referred to in the 13th (amended) Order of the 3rd April 1828, held to mean the answer to the original bill, on the ground that, if it were construed to refer to an answer to the amended bill, there would be no limit imposed by the order to the number of amendments, — until the court should consider them to be vexatious. *Dew v. Hickinbotham*, 4 Hare, 302.

Cases cited: *Wharton v. Swann*, 2 My. & K. 362; *Wilson v. Wilson*, V. C. England, March 16, 1845; *Attorney-General v. Nethercoat*, 2 M. & C. 604; *Haddelsea v. Neville*, 4 Beav. 28; *Lloyd v. Wait*, 4 My. & Cr. 257; *The Wimborne & Cranborne Union v. Masson*, M. R. March 1845.

2. *Amendment*. — When, at the time of amending his bill, the plaintiff has changed his residence, it should be stated by amendment; and this may be done, notwithstanding the rule, that subsequent facts are the proper subject of supplement and not of amendment. *Kerr v. Gillespie*, 7 Beav. 269.

3. *Amendment*. — Under the 13th amended Order of 1828, the six weeks after the answer to be deemed sufficient, within which a plaintiff can obtain an order to amend, has reference to the answer to the original and not to an amended bill.

After a full answer the plaintiff amended. The defendant answered the amended bill. Six weeks had expired from the time when the first, but not from the time when the second answer was to be deemed sufficient. *Held*, that any further application for leave to amend must be made to the court, and not to the master. *Wimbourn Union v. Masson*, 7 Beav. 309.

Cases cited: *Lloyd v. Wait*, 4 Myl. & Cr. 257; *Smith v. Webster*, 3 Myl. & Cr. 244; *Haddelsea v. Neville*, 4 Beav. 28; *Bertolacci v. Johnstone*, 2 Hare, 632; *Wharton v. Swann*, 2 M. & K. 362; *Attorney-General v. Nethercoat*, 2 Myl. & Cr. 604; *Davis v. Prout*, 5 Beav. 375; *Wilson v. Wilson*, V. C. E. March 12, 1844; *Matchitt v. Palmer*, 10 Sim. 241.

4. *Amendment*. — An order to amend as the

plaintiffs may be advised, does not authorise the names of co-plaintiffs to be struck out. *Slaggett v. Collins*, 13 Sim. 456.

Cases cited: *Attorney-General v. Cooper*, 13 Myl. & Cr. 258; *Fellows v. Deere*, 3 Beav. 363; *Brown v. Sawyer*, ib. 598.

5. *Supplemental*.—After a cause had proceeded so far that the bill could not be amended, the plaintiff, without the leave of the court, filed a supplemental bill, stating facts, all of which existed before the original bill was filed, but which, he alleged, he had only recently discovered. The statements and prayer of the supplemental bill were in accordance with the statements and prayer of the original bill. An objection, made at the hearing, that the supplemental bill had been irregularly filed, was overruled.

If a supplemental bill is irregularly filed, the defendant ought either to demur to it, or to move that it may be taken off the file. *Ranger v. The Great Western Railway Company*, 13 Sim. 368.

Cases cited: *Colclough v. Evans*, 4 Sim. 76; *Crompton v. Wombwell*, ib. 628; *Attorney-General v. Fishmongers' Company*, 4 Myl. & Cr. 1; *Wray v. Hutchinson*, 2 Myl. & Keen, 235; *Milligan v. Mitchell*, 1 Myl. & Cr. 433; *Walford v. Pemberton*, 13 Sim. 441.

6. *Supplemental*.—A supplemental bill may be filed after replication, without the leave of the court, in order to state matters which occurred before the filing of the original bill, but were not discovered until after replication. *Walford v. Pemberton*, 13 Sim. 441.

Cases cited: *Colclough v. Evans*, 4 Sim. 76; *Crompton v. Wombwell*, ib. 628; *Attorney-General v. Fishmongers' Company*, 4 Myl. & Cr. 1; And see *Ranger v. Great Western Railway*, 13 Sim. 368.

And see *Dismissal; Impertinence; Preliminary Inquiry*.

#### DEMURRES.

1. A plaintiff may set down a demurrer for argument without waiting for the defendant to enter it with the registrar.

Whether, since the Orders of 1841, it is necessary for the defendant to enter a demurrer with the registrar within eight days at all,—*quære*.

A defendant neglected to enter his demurrer with the registrar within eight days, the court refused to overrule it on that ground. *Dalton v. Hayter*, 7 Beav. 250.

Cases cited: *Jordan v. Sawkins*, 3 B. C. C. 372; *Bailock v. Edington*, 1 Sim. 481; *Hearn v. Way*, 6 Beav. 369.

[*Note*.—By the XLIV. General Order of the 8th May, 1845, pleas and demurrers need not be entered with the registrar.]

2. The plaintiff amended his bill after the defendant had answered it. The amendments changed the nature of the case. *Held*, that the defendant might demur to the amended bill, although he had answered that which was part

of the formal ground-work both of the new and of the original case. *Cresy v. Bevan*, 13 Sim. 354.

Cases cited: *Ellis v. Goodson*, 3 Myl. & Cr. 653; *Cresy v. Bevan*, 13 Sim. 99.

#### PARTIES.

1. *Bankrupt*.—The disclaimer by the assignees of a bankrupt of the equity of redemption of a term of years, vested in the bankrupt by the devise to him of the fee simple of the same estate, renders the bankrupt a necessary party to a bill of foreclosure, — *semble*. *Singleton v. Cow*, 4 Hare, 326.

Cases cited: *Appleby v. Duke*, 1 Hare, 303, and *Cash v. Belcher*, ib. 310.

2. *Executors*.—An estate subject to a mortgage was devised to executors for a term, subject to payment of debts, and subject thereto, to one for life, with remainder over. The executors joined in a transfer of the mortgage, and raised a further sum alleged to be necessary for payment of debts. The tenant for life, with the concurrence of the executors, afterwards sold the property absolutely, and the purchaser paid off the mortgage. A bill being filed by the remainder-man to redeem the purchase, on payment of the original mortgage only, and the cause being set down, on objection for want of parties: *Held*, that the plaintiff was not, at present, bound to make the executors parties.

Costs for setting down a cause on an objection for want of parties reserved to the hearing. *Greenwood v. Rothwell*, 7 Beav. 279.

Cases cited: *Pearse v. Howett*, 7 Sim. 471; *Osborne v. Foreman*, 2 Hare, 656.

3. *Husband and Wife*.—Property was given in trust "for the sole and absolute use" of a female infant. She afterwards married under age, and a settlement was made giving half to the wife for her separate use, and the other half to the husband; a bill was filed by the husband and wife, after the latter had come of age, against the trustees, seeking to charge them with a breach of trust. The court thought the frame of the suit improper, but gave leave to amend, and the wife being by amendment made to sue by her next friend, a decree was made.

After publication, a bill filed by husband and wife was amended by making the wife sue by her next friend: *Held*, that the evidence was still receivable. *Davis v. Prout*, 7 Beav. 288.

Cases cited: *Wake v. Parker*, 2 Keen, 59; *Reeve v. Dalby*, 2 Sim. & St. 164; *Ex parte Ray*, 1 Mad. 199; — *v. Lyne*, *Younge*, 562; *Simson v. Jones*, 2 Russ. & M. 374; *Johnson v. Johnson*, 1 Keen, 649; *Wynne v. Callander*, 1 Russ. 293; *Greenwood v. Churchill*, 1 Myl. & K. 559; *Platel v. Craddock*, C. P. Cooper, 469, 481.

4. *Next of Kin*.—Bill by parties claiming as next of kin against executors. Report, that other persons not parties were the sole next of kin. Exceptions by the plaintiffs to the report.

Objection, that the plaintiffs, before the exceptions were argued, must make parties the persons found next of kin by the master, overruled. *Topham v. Lightbody*, 4 Hare, 312.

Case cited: *Waite v. Temple*, 1 Sim. & Stu. 319.

5. *Legatees and Annuitants*. — If a person entitled to an annuity payable out of the testator's personal estate and the proceeds of the sale of his real estate, file a bill for the administration of the whole of the testator's property, all the other annuitants and legatees must be made parties, notwithstanding the receipts of the trustees are made sufficient discharges. *Miller v. Huddleston*, 13 Sim. 467.

Cases cited: *Pidgley v. Rawling*, 1 Y. & C. N. C. 552; and see *Lloyd v. Smith*, 10 Ves. 457; *Savoy v. Barber*, 4 Hare, 125.

6. *Mortgagee*. — A person entitled to an equity of redemption cannot make a mortgagee a party to a suit respecting the mortgaged estate without offering to redeem; but where a mortgagor, by deed to which the mortgagee was not a party, had conveyed another estate to trustees to sell and pay off the mortgage, so as to exonerate the mortgage estate, it was held that a person interested in the equity of redemption might file a bill, not offering to redeem, against the mortgagee and trustees, to have an execution of the trust.

An estate was mortgaged, and by deed to which the mortgagee was not a party, the mortgagor conveyed another estate to trustees to sell and pay off the mortgage, &c. A party interested in the equity of redemption filed a bill against the trustees and mortgagee to have an execution of the trusts of the deed; and it charged, that the parties to the trust deed did not intend to create any trust for the mortgagee, and that the trustees alleged that the mortgagee was interested in the matters in question, but the plaintiff charged the contrary, and that he had no legal or equitable interest in the estate, not being entitled to any interest under the deed of trust, "but nevertheless he made some claim to be interested therein, the nature of which he ought to set forth." Held, that this statement of claim prevented a general demurrer by the mortgagee.

To sustain a demurrer for want of parties, the defendant must show that the absent person is a necessary party according to the case of such defendant.

An estate was charged with a mortgage and with portions, and a term was vested in trustees for securing the portions. A second estate was conveyed on trust to sell and pay the mortgage and portions. In a suit for the execution of the trusts, the mortgagee objected that the trustees of the term were not parties; but the objection was overruled. *Dalton v. Hayter*, 7 Beav. 313.

Cases cited: *Plumbe v. Plumbe*, 4 Y. & Col. 345; *Tasker v. Small*, 3 Myl. and Cr. 69; *Pearse v. Hewitt*, 7 Sim. 479; *Wood v. White*, 4 Myl. & Cr. 460; *Ramsbottom v. Wallis*

*Coote on Mortgage*, 710, and *Jacob*, 352; *Plummer v. May*, 1 Ves. sen. 426; *Fenson v. Hughes*, 7 Ves. 287.

7. *Partners*. — To a suit seeking to wind up the affairs of a club or partnership, all parties interested must be made parties, though they are numerous; it is not sufficient for one to sue on behalf of the others. *Richardson v. Hastings*, 7 Beav. 301.

Cases cited: *Evans v. Stokes*, 1 Keen, 24; *Deeks v. Stanhope*, V. C. E. 21st March and 12th July, 1844; *Gray v. Chaplin*, 2 S. & S. 272; *Richardson v. Larpent*, 2 Y. & C. (N.C.) 507; *Bainbridge v. Burton*, 2 Beav. 539.

8. *Trustees*. — The 30th General Order of August 1841, applies to those cases only in which trustees have a present absolute power to sell real estate; and the 32nd Order does not apply to a case in which there is only one principal and one surety. *Lloyd v. Smith*, 13 Sim. 457.

See *Miller v. Huddleston*, 13 Sim. 467.

And see *Executor*, 2, p. 209, ante; and *Partnership*, 2, 3, p. 214, ante.

#### REVIVOR.

See *Abatement*.

### III. Practice in Equity.

#### APPEARANCE.

1. After a delay of between six and seven weeks, the court declined, *ex parte*, to grant to the plaintiff liberty to enter an appearance for a defendant under the 8th Order of August 1841. *Bradstock v. Whatley*, 7 Beav. 346.

Case cited: *Edmonds v. Nicoll*, 6 Beav. 334.

2. Where the subpoena to appear and answer had been served in August 1845, the court refused to allow an appearance to be entered under the 29th Order of May 1845, on a motion without notice. *Walker v. Hurst*, *Richards v. James*, *Inman v. Holden*, 13 Sim. 490.

3. An appearance cannot be entered for a defendant to an amended bill, under the 29th Order of May 1845, where the subpoena has been served upon his solicitor. *The Marquis of Hertford v. Suisse*, 13 Sim. 439.

#### CREDITOR.

See *Costs*, 3; *Preliminary Inquiry*, 3.

#### DISMISSAL.

1. A defendant filed a plea, but the plaintiff neither set it down, nor took any steps for three terms. The bill was, on motion, dismissed with costs. *Roberts v. Jones*, 7 Beav. 266.

2. A sole plaintiff became insolvent. His assignee filed a supplemental bill, but before appearance, obtained an order to dismiss the supplemental bill alone, without costs: Held, regular. Before appearance, a plaintiff may dismiss his bill without costs. *Thompson v. Thompson*, 7 Beav. 350.

Cases cited: *Horlock v. Priestley*, 8 Sim. 621; *Lord Huntingtower v. Sherborn*, 5 Beav. 380; 1 Smith's Prac. 422; *Wyatt's Pr. Reg.* 60, 61.

3. Replication filed in July, 1845; in November following defendant moved to dismiss. After notice served, but before motion made, plaintiff filed subpoena to rejoin. *Held*, that although the replication was filed before the new orders of May 1845 took effect, the filing of the subpoena to rejoin was a nullity, under the 93rd of those orders; but the court refused to grant the motion, and ordered a fresh replication to be filed without delay. *Lovell v. Blew*, 13 Sim. 492.

4. Replication filed in April 1845, and no proceeding in the cause having been since taken, the defendant, in November following, moved to dismiss. The court refused to grant the motion; and ordered a fresh replication to be filed. *Routledge v. Gibson*, 13 Sim. 493.

See p. 243, *post*.

#### EXCEPTIONS.

See *Answer*, 1.

#### GUARDIAN AD LITEM.

1. On the application of the plaintiffs, a six clerk was appointed guardian *ad litem* for a defendant, who was stated to be an infant, but was in reality of full age. A decree was made and the accounts taken on that footing. *Held*, that the proceedings were not binding on him, and the plaintiffs were ordered to pay the costs of the six clerk. *Green v. Badley*, *Green v. Thompson*, 7 Beav. 271.

2. The solicitor of the Suitors' Fund appointed, under the 28th Order of October 1842, guardian *ad litem* of a lunatic defendant, not so found by inquisition. *M'Keverakin v. Cort*, 7 Beav. 347.

Cases cited: *Brooks v. Jobling*, 2 Hare, 155; note to *Needham v. Smith*, 6 Beav. 130.

3. Whether a guardian *ad litem* can be assigned to an infant resident within the jurisdiction, without bringing him into court, or by means of a commission,—*quære*. *Nixon v. Few*, 7 Beav. 349.

Cases cited: *Shuttleworth v. Shuttleworth*, 2 Hare, 147; *Smith v. Palmer*, 3 Beav. 10; *Drant v. Vause*, 1 Y. & C. (C. C.) 580; *Hill v. Smith*, 1 Mad. 290; *Green v. Badley*, 7 Beav. 271.

4. Guardian *ad litem*, appointed to infants, under special circumstances, without a commission or their appearing in court. *Stillwell v. Blair*, 13 Sim. 399.

#### INFANT.

A *habeas corpus* issued to bring up the body of a ward of court, who had been taken in execution in an action by a tradesman, for necessities, and the tradesman was ordered to attend at the bar of the court at the same time. *Bond v. Roberts*, 13 Sim. 400.

And see *Guardian*.

#### INJUNCTION.

Interim order on petition in an abated suit, in the nature of an injunction for a limited time, to protect property in question in that suit before another branch of the court, giving the petitioner an opportunity of applying in such other branch of the court, he undertaking to revive, or otherwise make himself a party to, the abated suit. *Fisher v. Fisher*, 4 Hare, 196.

And see *Joint Stock Company*, p. 210, *ante*; *Lien*, p. 213, *ante*.

#### IMPERTINENCE.

After subpoena to rejoin, a defendant cannot, without special leave, refer the bill for impertinence, though he has taken no step in the cause since its amendment.

Plaintiff amended his bill requiring no further answer, and after the expiration of the eight days, filed a replication and served the subpoena to rejoin. The defendant afterwards took exceptions to the amended bill for impertinence: *Held*, irregular.

Whether the eight days mentioned in the 14th Order of 1833 are to be computed from the filing the amended bill, or from amending the defendant's office copy,—*quære*. *Grubb v. Perry*, 7 Beav. 375.

Cases cited: *Barnes v. Saxby*, 3 Swan. 232; *Mootham v. Waskett*, 1 Mer. 243; *Manners v. Bryan*, 1 Myl. & K. 453; S. C. 5 Sim. 147, and 148 n.; *M'Intosh v. Great Western Railway Company*, 1 Hare, 331; *Richardson v. Horton*, 5 Beav. 91; *Jeffray v. M'Cabe*, 1 Russ. & Myl. 739; *Bradbury v. Booker*, 4 Sim. 325; *Kinworthy v. Allen*, 1 Bro. C. C. 400; *Anon*, 2 Ves. sen. 631; *Anon*, 5 Ves. 656; *Pellew v. —*, 6 Ves. 456; *Beaven v. Waterhouse*, 2 Beav. 58; *Everett v. Prythergch*, 12 Sim. 363; *Stanley v. Bond*, 5 Beav. 175.

#### MOTIONS.

Whether the modern rule of practice, that motions of course may be made on any day in or out of term, is universal, or is subject to any qualification,—*quære*. *Radburn v. Jervis*, 7 Beav. 353.

Case cited: *Lord Harborough v. Wartnaby*, 1 Phil. 364.

#### PAUPER.

Pauper order discharged, the particular circumstances, tending to show that the plaintiff was not a pauper, not being specifically denied. *Mather v. Shelmerdine*, 7 Beav. 267.

Cases cited: *Romilly v. Grint*, 2 Beav. 186; *Boddington v. Woodley*, 5 Beav. 555.

#### PAYMENT INTO COURT.

See *Trust*, 6, p. 217, *ante*.

#### PRELIMINARY INQUIRY.

1. Where the substantial equity of a plaintiff's bill is denied by the answer, the court will not, on motion, direct the preliminary inquiries, under the 5th General Order of 9th May, 1839.

A bill was filed to set aside a voluntary

settlement, on the ground of the insolvency of the settlor, the insolvency being denied by the answer. The court declined ordering, on motion, the preliminary inquiries as to the parties interested under the settlement. *Belcher v. Whitmore*, 7 Beav. 245.

Cases cited : *Hawkins v. Hawkins*, 1 Hare, 543; *Breeze v. English*, 2 Hare, 118; *Topham v. Lightbody*, 1 Hare, 289; *Frost v. Hamilton*, 4 Beav. 33; see *Meinertzhagen v. Davis*, 10 Sim. 289; *Lee v. Shaw*, ib. 369; *Logan v. Baines*, ib. 604; *Wilson v. Applegarth*, ib. 657.

2. A preliminary inquiry, under the 5th General Order of May 1839, as to who was next of kin, was refused, where the plaintiff sued in his right of next of kin; but it was denied by the answer that he filled that character. *Kinskela v. Lee*, 7 Beav. 300.

See *Meinertzhagen v. Davis*, 10 Sim. 289; *Strother v. Dutton*, ibid. 288; *Belcher v. Whitmore*, 7 Beav. 245.

3. The preliminary accounts of the testator's estate, debts, &c., being directed upon motion, it was ordered that the creditors who should not come in should be excluded the benefit of the order. *Trotter v. Walmesley*, 7 Beav. 264.

Cases cited : *Hornby v. Hunter*, 1 Russ. 79; *Teague v. Richards*, 11 Sim. 46.

#### PRO CONFESSO.

1. Course of proceeding to take a bill *pro confesso* after appearance, under the 1st Order of April 1842.

Form of charging order in equity under 1 & 2 Vict. c. 110, s. 14. *Stanley v. Bond*, 7 Beav. 386.

2. A defendant against whom a subpoena was prayed when he should come within the jurisdiction, remained out of the jurisdiction at the hearing of the cause. *Held*, that the form of praying the subpoena was no objection to the bill being taken *pro confesso* against him. *Flight v. Camac*, 13 Sim. 413.

#### PRODUCTION OF DOCUMENTS.

1. Order for the production of title-deeds of a mortgagee, who also claimed to be a purchaser of the equity of redemption, refused. *Greenwood v. Rothwell*, 7 Beav. 291.

Cases cited : *Hardman v. Ellames*, 2 Myl. & K. 732; *Bolton v. The Corporation of Liverpool*, 1 Myl. & K. 88.

2. A. B. and C. had been copartners in the working of certain collieries. That copartnership having determined, and a new copartnership having been formed between C. D. and E., the plaintiff in a suit relating to the affairs of the late copartnership, to which C. was a party, served D. and E., and the agent of their firm, (none of whom were parties to the suit) with a subpoena *duces tecum*, requiring them to produce certain books of the late firm; and also moved that C. might be ordered to concur with D. and E. in producing the books or causing them to be produced, and to give or join in

giving such directions to D. and E., and the agent, as should be necessary to enable or authorise them to obey the subpoena. The court refused the motion, with costs. *Stuart v. Lord Bute*, 13 Sim. 453.

See *Partnership*, 1, p. 214, *ante*.

#### RIGHT TO BEGIN.

A defendant took exceptions to the master's report, and also presented a petition of rehearing, objecting to the original decree, on the ground of want of parties, and also to a part of that decree. The exceptions and rehearing came on together. *Held*, the defendant was entitled to begin. *Pringle v. Crookes*, 7 Beav. 257.

#### SERVICE OF BILL.

Memorandum of serving copy bill allowed to be entered after the orders of May 1845 were in operation, although the service would have been bad if made after those orders took effect. *Feltham v. Clarke*, 13 Sim. 491.

#### SERVICE (SUBSTITUTED.)

On a bill to enforce the payment of trusts for the sale of estates, part of which had been sold, against the trustees who could not be found, substituted service was ordered on the defendant's solicitor, who had acted on his behalf in the business of the preparation of the trust deed, and of all the sales which had taken place under it. *Hornby v. Holmes*, 4 Hare, 306.

Cases cited : *Hobhouse v. Courtney*, 12 Sim. 140; *Cooper v. Wood*, 5 Beav. 391; *Weymouth v. Lambert* 3 Beav. 333; *Webb v. Salmon*, 3 Hare, 251, and *Murray v. Vipart*, 1 Ph. 521.

See p. 249, *post*.

#### SUBPENA TO HEAR JUDGMENT.

Where, at the hearing, a cause stands over, with liberty to amend, and the bill is amended accordingly, a new subpoena to hear judgment must be served. *Davis v. Proul*, 7 Beav. 256.

#### TAXATION.

See *Solicitor*.

#### TIME.

See *Answer*, 1; *Impertinence*.

#### WITNESS.

*Re-examination*. — Witnesses examined for the defendant, on an inquiry as to the value of an estate in fee simple, in answer to interrogatories deposed, that, subject to a certain lease in which it was comprised, the value was so much. By their affidavits subsequently they stated, that they meant to refer to the lease as beneficial to the owner of the fee simple, and not as a burden, which the examination as taken down, would imply. On the motion of the defendant, the witnesses were allowed to be re-examined on that point, notwithstanding the defendant was himself the lessee of the estate, and had by his state of facts alleged, that the lease contained covenants which were burden-

some on the owner of the fee simple. *Cass v. Cass*, 4 Hare, 278.

Cases cited: *Whittaker v. Wright*, 2 Hare, 321, 322; see also S. C. 3 Hare, 412; *Griells v. Gansell*, 2 P. Wms. 646; *Rowley v. Ridley*, 1 Cox, 281; S. C. 2 Dick. 677; *Kirk v. Kirk*, 13 Ves. 280; *Lord Abergavenny v. Powell*, 1 Mer. 130; *Hougham v. Sandys*, 2 Sim. & St. 221; *Melford v. Peters*, 8 Sim. 630.

#### IV. Costs.

1. Costs to be paid to a party, ordered after his bankruptcy, to be set off against costs ordered to be paid by the same party before his bankruptcy. *Lee v. Pain*, 4 Hare, 255.

Cases cited: *Jackson v. Leaf*, 1 J. & W. 229; *Taylor v. Southgate*, 4 Myl. & Cr. 203; *Ex parte Bentley*, 2 Des. & Ch. 578.

2. Pending the suit, the infant plaintiffs and their next friend went abroad, and upon a subsequent amendment the fact was not noticed. A motion for security for costs was refused, there being no wilful intention to mislead, the residence abroad not being permanent, and no danger of losing the costs being suggested. *Kerr v. Gillespie*, 7 Beav. 269.

Cases cited: *Sandys v. Long*, 2 Myl. & K. 487; *Simpson v. Burton*, 1 Beav. 556; *Wray v. Hutchinson*, 2 Myl. & K. 235.

3. The 47th Order of August 1841, giving costs to creditors who prove their debts before the master, does not affect the costs to which the plaintiffs in the cause are entitled. *Flintoff v. Haynes*, 4 Hare, 309.

And see *Trust*, 2, 7, pp. 217, 218; *Dismissal*, 1, 2; *Guardians*, 1.

4. Within twelve months after payment of a bill of costs, a client presented a petition for its taxation, but the petition having specified no items of overcharge, no order could be made. The twelve months having then expired, the court refused to allow the petition to stand over, for the purpose of amendment, by specifying the items. *Barwell v. Brooks*, 7 Beav. 345.

Cases cited: *In re Downes*, 5 Beav. 425; *Sayer v. Wagstaff*, 5 Beav. 415.

[Some of the decisions involve points as well of Pleading as Practice, and it is sometimes difficult to separate them. The references, however, will generally provide against this imperfection.

It may also be observed, that many of the cases in the Digest have been reported at an earlier period in the *Legal Observer*; but it has been deemed proper to include them amongst the others, in order that the collection may be complete.—Ed.]

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

#### ORDER OF COURSE.—IRREGULARITY.

*An order of course cannot be amended after it has been served, except upon special application to the court, although the error in it has arisen from a mere slip.*

THIS was a motion to set aside an order of course obtained for referring exceptions to the answers of the defendants to the amended bill for irregularity. The bill was filed in June 1844, and the answers were put in in October 1844. In the early part of 1845 the bill was amended, and new parties added, and the answers to the amended bill were put in in July last. On the 6th of Nov. exceptions were taken for insufficiency to the answers of the new as well as the original defendants, and on the 18th of Nov. orders were obtained for referring the matter to the master, which were duly served. By these orders the master was directed to look into the plaintiff's bill, and the answers thereto, and report as to the sufficiency of the latter. The time for obtaining the order of reference expired on the 20th of Nov. On the 22nd, a warrant was taken out for proceeding on the exceptions, which was attended on the 25th, when it appearing that the word "amended" had been omitted in the orders of reference, the plaintiff's solicitor applied to the Secretary of the Rolls, who inserted the missing word, and the orders were re-served.

Mr. Toller now moved to set aside these orders for irregularity, on the grounds that the time having expired for obtaining orders to except, when they were re-served, they could not be acted on, and that after an order had been served it could not be altered. The plaintiffs were also wrong in making the reference to the master in rotation, when there was a master to whom the cause had been previously referred.

The Master of the Rolls said the question was, whether the officer could not correct a mere clerical error. The usual course, when a cause was referred to a wrong master, was to have the order amended, or to alter it in the public office.

Mr. Bilton, in opposition to the motion, said, that there had been no surprise upon the defendants, for they well knew the exceptions were to the answers to the amended bill; and as the omission was a mere slip, the alteration was properly made. The petitions, also, upon which the orders were made contained the word "amended." Besides which, the defendants acquiesced, for after the master had allowed the exceptions, the defendants' solicitor took out a warrant for the master to re-consider, and on attending this warrant, asked

the master to enlarge the time for making his report, stating that the defendants intended to apply to the court to set aside the order.

The *Master of the Rolls* said, he did not consider taking out the warrant a waiver of the defendants' right to object to the order. The material point was, that the defendants served the orders on the 28th of November, and that was after time allowed for obtaining them had expired. He would not say that an order given out with an error plainly clerical, might not be amended, or if such an error was discovered in the master's office. If the correction in this case had been made before service of the orders, he would not have disputed them; but after service the case was different: and in a case of exceptions it was important, because they were not to be referred after a particular time. If the parties had gone on, there might have been a question whether the word "amended" was necessary; but having re-served the order after the time had expired, the proceeding was irregular. The order must therefore be discharged, with costs. His lordship added, that all he intended to decide was, that an order of course, after having been served, could not be amended without an application to the court.

*Wooll v. Townley*, Dec. 20th, 1845.

#### Vice-Chancellor of England.

1 WILL. 4, C. 36, S. 15, RULES 2ND & 6TH.

*The report of the master, under the 6th of the above rules, that a defendant is unable to put in his answer by reason of poverty, will not prevent the bill being taken pro confesso against him under the 2nd rule, if he has not followed up the report by an application to the court.*

*If a defendant is brought up from prison in the country, under the 2nd of the above rules, and committed to the Queen's Prison, the bill may be taken pro confesso against him, without bringing him up a second time for the purpose of remanding him to the Queen's Prison.*

THIS was a motion to take a bill *pro confesso*, under the 2nd rule of clause 15 of the 1 Will. 4, c. 36.

Mr. Younge, for the motion.

Mr. Anstey, contra, said, that the defendant had been reported by the master, under the 6th rule, to be unable to put in his answer by reason of his poverty, and that this report must be taken to have purged his contempt. But

The Vice-Chancellor said, that it was the defendant's business to have acted upon the report; that it was made for his benefit, and he must follow it up by an application to the court, if he would have the advantage of it.

Mr. Anstey then contended that the order for taking the bill *pro confesso* could not be made until the defendant had been remanded to

the Queen's Prison. It appeared that he had been brought up from Staffordshire to the bar of the court, under the 2nd rule, and committed to the Queen's Prison, which Mr. Anstey maintained was not sufficient to warrant the present motion. *Viscountess Barnewell v. Cooke*, 7 Sim. 320; *Welford v. Daniel*, 9 Sim. 652.

But the Vice-Chancellor said, that he saw no objection to the application to take the bill *pro confesso*, and made the order accordingly.

Anon. Dec. 20, 1845.

#### BILL, DISMISSAL OF.—93RD ORDER OF MAY 1845.—COSTS.

*Where replication was filed before the orders of May 1845 came into operation, and the defendant would be entitled to dismiss for want of prosecution according to the time limited by those orders, the court will order the plaintiff to file a new replication within a limited time, or that the bill shall be dismissed; but will not give any costs of the motion.*

The bill was filed in this cause on the 22nd January, 1842, and amended 11th January, 1844. Replication was filed 24th of April, 1844, since which no proceedings had been taken. The defendant now moved to dismiss, on the ground that publication having expired according to the 93rd Order of 1845, and no step having been taken by the plaintiff, the bill should be dismissed as a matter of course.

In answer to the application, an affidavit was filed for the purpose of accounting for the delay in proceeding, by which it appeared there had been a change of solicitors, and much time had been consumed in obtaining the papers.

Mr. Bethell, for the motion.

Mr. Stuart and Mr. Jenkins opposed it, and asked for costs.

The Vice-Chancellor said he could not grant the application, as it had been settled between himself, the Master of the Rolls, and Vice-Chancellor Wigram, that in such cases a new replication should be filed. He would therefore order that the plaintiff should file a new replication within a week, or that the bill should be dismissed; but as the court was dealing with a new state of things, he should not give any costs.

*Hoole v. Roberts*, Dec. 10th, 1845.

#### SERVICE OF ORDERS.

*Under the present practice it is not necessary, if the same solicitor appears for more than one party, to serve more than one copy of an order nisi upon him.*

Mr. Twells requested the opinion of the court, as to whether it was necessary where one

solicitor appeared for two parties, to serve two copies of an order nisi upon him, or whether one was sufficient. He said, that it was formerly the practice to serve as many copies as there were parties upon the clerk in court, because it could not be known whether he appeared in each case for the same solicitor, but at present, when the solicitor himself was served, this practice seemed no longer needed; and with this view,

His Honour concurred, saying he saw no reason for multiplying copies of orders.

Ason. Dec. 20, 1845.

#### SUBSTITUTED SERVICE.

Mr. Webster moved to substitute service upon a defendant resident in Jamaica, by serving another defendant, who had in his answer admitted, that he was the agent of the first mentioned defendant, in the matter in question in the cause. But

His Honour refused to make the order upon the admissions of the agent; they were no evidence against the party as against whom the order must be made.

Webster v. Barnes. Dec. 20, 1845.

#### Queen's Bench Practice Court.

##### TRIAL UNDER WRIT OF TRIAL.—VERDICT SUBJECT TO REFERENCE.

*Though a sheriff, upon a trial had under a writ of trial, has no power to take a verdict by consent, subject to a reference, still a verdict so taken is not a nullity. Therefore, where, after a verdict so taken for the plaintiff, the reference went off, and the plaintiff, without the defendant's consent, or leave of the court, altered the writ of trial, proceeded to a second trial, and obtained a verdict, such verdict was set aside.*

THIS cause came on for trial before the undersheriff of Middlesex on the 22nd of July last, when a verdict was taken for the plaintiff, subject to the certificate of an arbitrator. A barrister was named, and accepted as the arbitrator by both parties, but his name being incorrectly indorsed on the brief, and he being out of town at the time, application was made by the plaintiff's attorney to the defendant's attorney for his consent to the appointment of another arbitrator. The defendant's attorney, however, refused to consent, whereupon the plaintiff's attorney altered and resealed the old writ of trial, and without altering the issue or delivering a fresh one, gave notice of a second trial for the then ensuing 7th of August. Accordingly, the cause again came on for trial, and no one appearing for the defendant, a verdict was found for the plaintiff for 4l. 5s. 9d. A rule having been obtained calling upon the plaintiff to show cause why the second verdict should not be set aside,

Butt, Q. C., now (Nov. 19th) showed cause, and contended that the verdict taken at the first trial was a nullity, the sheriff, under a writ of trial, having no power to refer a cause to arbitration, (*Wilson v. Thorpe*, 6 M. & W. 721.)

*Rew*, contra. *Wilson v. Thorpe* does not show that the first verdict was a nullity, but merely that the court would set aside a verdict so taken upon motion, and the plaintiff had no right, so long as that verdict was undisturbed, to proceed to another trial. And even if the proceedings at the first trial were irregular, the irregularity was cured by the defendant's consent. *Pryme v. Titchmarsh*, 10 M. & W. 605. But further, the second trial is irregular, in consequence of the variance between the issue and the writ of trial in its altered state, (*Dennett v. Hardy*, 2 Dowl. & L. 484,) and because the writ of trial has been altered without the leave of the court. *Lycett v. Tenant*, 4 Bing. N. C. 168.

*Cur. adv. vult.*

*Patteson, J.* (Nov. 20.) It is clear that the first verdict was not a nullity, and *Wilson v. Thorpe* does not decide that it can be so treated. There a verdict had been taken for the plaintiff by consent, subject to a reference, and a verdict and judgment for the defendant having been entered in pursuance of the award of the arbitrator, the court set aside such verdict and judgment, but not the award. The second verdict must therefore be set aside, and the first cannot stand unless the parties consent to an arrangement.

Rule accordingly. Costs to abide the event of the cause.

*Harrison v. Greenwood.* Michaelmas Term, 1845.

#### Exchequer.

##### WITHDRAWAL OF JUROR.—STAY OF PROCEEDINGS.

*The withdrawal of a juror by consent of counsel on both sides, puts an end to that cause of action, therefore if a second action be brought for the same cause the court will stay proceedings with costs.*

*Shee*, Serjeant, had obtained a rule, calling on the plaintiff to show cause why all proceedings in an action should not be stayed, with costs to be paid by the plaintiff, on the ground that the action had been commenced against good faith. It appeared that a former action had been brought for the same cause, and on its coming on for trial, a juror was withdrawn by consent of counsel on both sides. The affidavit of the defendant's attorney stated, that there was a distinct understanding that all proceedings should thenceforth cease. That allegation, however, was denied by the affidavit of the plaintiff's attorney, which stated, that he was not aware that the withdrawal of a juror



would preclude him from bringing another action.

*Horne* showed cause. *Sanderson v. Nestor*. 1 Ry. & Moo. 402, decided, that the withdrawal of a juror by consent of the parties is no bar to a future action for the same cause. *Mosecati v. Lawson*, 1 Har. & Wol. 572, is distinguishable, for in that case it appeared that the parties intended to bring the matter to a final conclusion. Here it is clearly shown that there was no such intention.

*Shee*, Serjeant, was not called upon to support the rule.

*Pollock*, C. B. The rule must be absolute. It has been long established, that where parties consent to withdraw a juror no second action can be brought for the same cause. Counsel on both sides must have been fully aware of the consequences of such a proceeding, and it is quite immaterial what was the belief or understanding of the attorneys. *Sanderson v. Nestor* is no authority on the point, for all that case decides is, that if the defendant neglects to apply to the court to stay proceedings in the second action, he cannot at the trial set up as a defence, that a juror was withdrawn in the first action.

*Alderson*, B. I always thought that perfectly clear, that the withdrawal of a juror by consent of counsel puts an end to the cause. The attorneys are in the hands of their counsel, and whatever course they adopt, the parties are bound by it.

Rule absolute.

*Gibbs v. Ralph*. Exchequer, M. T., 24th Nov. 1845.

## HILARY TERM EXAMINATION AND ADMISSION.

THIS examination will take place, as we expected, on Thursday, the 22nd instant, being the first of the ten days prescribed by the rule of court.

The Master of the Rolls has appointed Wednesday, the 28th, to swear in and admit the candidates on the roll of solicitors. This is a convenient arrangement. The examiners' certificates will be delivered on the 24th, and there will be several days to obtain the judges' fiat and complete the common law admissions. It will be recollected that formerly the applicants had to wait for admission in Chancery till the day after term.

## CHANCERY CAUSE LISTS.

*Hilary Term*, 1846.

Lord Chancellor.

### APPEALS.

Day to	{ Strickland	Strickland	
be	{ Ditto	Beynton	appeal
fixed	{ Ditto	Strickland	

Abated Millar	Craig	do. pt. hd.
Forbes	Peacock	do. pt. hd.
Tylee	Hinton	appeal
Miln	Walton	do.
Vandeleur	Blagrave	do.
Abated Croaley	Derby Gas Co.	do.
Parker	Bulk	do.
Ladbroke	Smith	do.
S. O. Hitch	Leworthy	do.
Coore	Lowndes	do.
Minor	Minor	3 appeals
Drake	Drake	appeal
Dalton	Hayter	do.
Baggett	Meux	do.
Payne	Banner	do.
Dobson	Lyall	do.
Moorat	Richardson	do.
Millbank	Collier do. want of parties	
Deeks	Stanhope	3 appeals
Wiltshire	Rabbit	appeal
Archer	Hudson	do.
Turner	Newport	do.
Attorney-Gen.	{ Masters & Wardens, &c. of the City of Bristol. }	appeal
Trulock	Robey	appeal
Yonaghushand	Gisborne	do.
Courtney	Williams	do.
Whitworth	Gangain	do.
Bush	Shipman	do.
Black	Chaytor	do.
{ Mitford	Reynolds exons. by order	
{ Johnson	Ditto fur. dirs. by order	
Thwaites	Foreman	appeal
Watts	Lord Eglinton	do.
Curson	Belworthy	do.
Watson	Parker	do.
Dietrichson	Cabburn	do.
Bellamy	Sabine	do.
Attorney-Gen.	Malkin cause by order	
Johnson	Child	appeal
Kidd	North	do.
Dord	Wightwick	do.
Carmichael	Carmichael	do.
Hawkes	Howell	do.
Heming	Swinnerton	do.
Trail	Bull	do.
Youde	Jones	do.
Wrightson	Macaulay	do.
Carpinzel	Powie	do.

## Vice-Chancellor of England.

### PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

*Nokes v. Sipping*, dem.  
*Jones v. Morgan*, 3 dams.  
*Nicholson v. Wilson*, fur. dirs. pt. hd.  
*To fix a day*, *Atkinson v. Jones*, *Atkinson v. Manley*.  
 15th Jan. *Friswell v. King*, fur. dirs. and costs and pets.  
*To fix a day*, *Gaches v. Warner*, 3 causes.  
*Day to be fixed*, *Mayor, &c. of Louth v. Wardens, &c., of Louth Free School*.  
*Day to be fixed*, *Champion v. Champion*.  
*Langton v. Comans*, *Langton v. Leaver*.  
*Gregon v. Hindley*.  
*Roberts v. Thomas*, otherwise James.

Mayo v. Roake.  
 Richards v. Perkins, 3 causes fur. dirs.  
*To fix a day*, Attorney-Gen. v. Earl of Devon.  
 Beale v. Boot, fur. dirs. and costs.  
 Davis v. Chanter, 3 causes, Same v. Best, advd.  
 by order.  
 Hearn v. Way.  
 Jones v. Jones, 4 causes.  
 Harris v. Davison.  
 Parker v. Goude.  
 Beckwith v. Hawkins, fur. dirs. and costs.  
 Johnson v. Forrester, fur. dirs. & costs.  
 Ross v. Blink.  
 Henderson v. Eason, exons.  
 Searle v. Law, fur. dirs. and costs.  
 Ferrabee v. Lewis, fur. dirs. and costs.  
 Harcourt v. M'Cabe.  
 Booth v. Crowswick, exons.  
 Albibone v. Jones.  
 Howall v. Reeves.  
 Smith v. Sherwood.  
 Legh v. Legh, fur. dirs. and costs.  
 Newport v. Lomas, 5 causes, exons. and ditto.  
 Parnell v. Hand, fur. dirs. and costs.  
 Smith v. Plummer.  
 Attorney-Gen. v. Wright.  
 Terry v. Wachter.  
 Barroside v. Swann.  
 Scott v. Swann.  
 Rogers v. Rogers, fur. dirs. and costs.  
 Homer v. Billam.  
 Simpson v. Holt, fur. dirs. and costs.  
 Thompson v. Michela.  
 Garrod v. Moor.  
 Larkin v. Sandle, fur. dirs. and costs.  
 Lovett v. Mqs. of Bath.  
 Smale v. Beckford.  
 Pascock v. Kernot.  
 Morrison v. Watkins.  
 Patten v. Peoples.  
 Seafie v. Stewart, fur. dirs. and costs.  
 Wright v. Barnswell, exons. and fur. dirs.  
 Greenway v. Buchanan.  
 Walton v. Morrill.  
 Ring v. Roberts, fur. dirs. and costs.  
 Parker v. Hawkes, exons.  
 Davison v. Bagley.  
 Brunton v. Neale.  
 Penny v. Turner.  
 Attorney-Gen. v. Malkin.  
 Giffard v. Withington.  
 Daniel v. Hill.  
 Insole v. Featherstonhaugh.  
 Lane v. Durant, exons. and fur. dirs.  
 Pocock v. Johnson.  
 Coope v. Lewis.  
 Evans v. Hunter.  
 Pennant v. Pennant, cause and petition.  
 Attorney-Gen. v. Trevanion.  
 Stert v. Cooke.  
 Blundell v. Gladstone, 4 causes, fur. dirs.  
 Dew v. Bernard.  
 Fish v. Palmerston.  
 Hodgkinson v. Barrow, fur. dirs. and costs.  
 Short, Colbourn v. Cobing.  
 Penn v. Edmonds.  
 Langton v. Langton, 2 causes.  
 Short, Parkin v. Knight, fur. dirs. and costs.  
 Higgins v. Francis.  
 Gower v. Bennett, fur. dirs.  
 Wallis v. Wallis.  
 Palmer v. Palmer.  
 Pawson v. Smith, 2 causes.  
 Gabriel v. Sturgis.  
 Doubtfire v. Elworthy, fur. dirs.

Mackreth v. Williams, ditto.  
 Hickson v. Smith, at deft.'s request.  
 Askew v. Peddle, fur. dirs. and costs.  
 Palmer v. Pattison ditto.

### Vice-Chancellor Knight Bruce.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Brydges v. Bacon, dem.  
*After Hilary Term*, Hobson v. Everett, Hobson  
 v. Ferraby, Ferraby v. Hobson, Ferraby v. Ferraby.  
*Jan 14th*, Christie v. Hodges, Ditto v. Ditto.  
*To fix a day*, Sutherland v. Cooke, Same v. Jack-  
 son, fur. dirs. and costs.  
*Jan. 22*, Hulkes v. Hulkes.  
 Duke v. Barnett.  
 Garside v. Edwards.  
 Hadfield v. Ditto.  
*Jan. 14th*, Dobson v. Austen.  
 Pierce v. Franks.  
 Early v. Benbow.  
 Goodwin v. Goswell.  
 Lloyd v. Waring.  
 Pattison v. Pattison.  
 Watts v. Hyde.  
 Butler v. Powis, fur. dirs. and costs and petn.  
 S. O., Davies v. Price.  
 Cockshott v. Cockshott.  
 Le Blanc v. Le Blanc.  
*Jan. 12th*, Billing v. Webb, exons. pt. hd.  
 Ditto v. Ditto, fur. dirs.  
 Farquharson v. Cave.  
 Shields v. Boucher.  
 Relfe v. Pocock.  
 Wilkinson v. Earle.  
 Watts v. Spottiswoode.  
 Taylor v. Butler.  
 Nixon v. Few, fur. dirs. and costs.  
 Edwards v. Edwards, Same v. Williams, Same v.  
 Serle, fur. dirs. and costs.  
 Burkett v. Ransom, exons.  
 Attfield v. Williams.  
 Freer v. Lafargue.  
 Law v. Jackson.

### Vice-Chancellor Stirling.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

*When suppl. bill set down*, Adie v. Walford, Wal-  
 ford v. Adie.  
*To apply to L. C.* Atkinson v. Boyes.  
 Blay v. Skipworth, fur. dirs. and costs.  
 Evans v. Evans.  
 Goodridge v. Honeywill, Goodridge v. Black-  
 stone.  
 Coope v. Carter.  
 Paternoster v. Paternoster.  
 Jones v. Rose.  
 Ward v. Bassett, Ward v. Hearn, Ward v. Ben-  
 son.  
 Allen v. Anderson.  
*Jan. 12th*, Edwards v. Dodd, Same v. Bosanquet,  
 fur. dirs. and costs.  
 Shrewsbury v. Hornby, ditto.  
*Jan. 12th*, Barnes v. Barnes, ditto.  
*Jan. 17th*, Hooper v. Hill.  
*Jan. 12th*, Moore v. Newham, Same v. Stafford,  
 fur. dirs. and costs.  
 Barnes v. Johnson.  
 Morse v. Tucker, Same v. George, Same v. Tuc-  
 ker, fur. dirs. and costs.

Mackinney v. Jones, ditto.  
 Wilkin v. Townshead.  
 Lambeth v. Willetts.  
 Wilson v. Wilson.  
 Pendergast v. Lushington, fur. dirs. and costs.  
 Cathrow v. Ede, Same v. Cathrow.  
 Chandler v. Brittan, Same v. Shepherd.  
 Newton v. Sadler.  
 Hudson v. Dungworth, Same v. Wilson.  
 Leek v. Porter.  
 Brookes v. Cotes.

## QUEEN'S BENCH CAUSE LIST.

**Crown Paper.**

*Hilary Term, 1846.*

For Saturday, Jan. 17.

*England.*—Robert Campbell als. and another v. The Queen in error.

*Birmingham.*—The Queen v. The Churchwardens, &c. of Birmingham.

*Yorkshire.*—The Queen v. The Inhabitants of Scammonden.

*Sussex.*—The Queen v. Christopher Nevill, clk.

*Herts.*—The Queen v. James Smith.

*Yorkshire.*—The Queen v. David Smith.

*Essex.*—The Queen v. H. J. Conyers and others.

*London.*—The Queen v. William Innes.

*Durham.*—The Queen v. Surveyors of the Highways of the Township of Westoe.

*Kent.*—The Queen v. The Mayor of Sandwich.

*Kent.*—The Queen, v. George Buchanan.

*Middlesex.*—The Queen v. The Inhabitants of Mile End Old Town.

*Salop.*—The Queen v. The Inhabitants of Gournon.

*Cornwall.*—The Queen v. The Inhabitants of St. Gennys.

*Yorkshire.*—The Queen v. Joseph Foster.

*Devon.*—The Queen v. The Inhabitants of High Bickington.

*Devon.*—The Queen v. The Inhabitants of Ashburton.

*Middlesex.*—The Queen v. William Bond, Esq.

*Wilts.*—The Queen v. The Inhabitants of Bradford.

*Middlesex.*—The Queen v. Thomas Paynter, Esq.

*Kent.*—The Queen v. The Mayor of Dover.

*Yorkshire.*—The Queen v. The Inhabitants of Keighley.

*Ely.*—The Queen v. The Inhabitants of Chatham, Kent.

*Yorkshire.*—The Queen v. The Inhabitants of Northouam.

*Devon.*—The Queen v. The Inhabitants of Newton Ferrers.

*Surrey.*—The Queen v. The Churchwardens of St. Mary, Lambeth.

*Leicestershire.*—The Queen v. The Inhabitants of Radcliffe Culey.

*Lincolnshire.*—The Queen v. The Trustees of the River Welland.

*Huntingdonsire.*—The Queen v. The Inhabitants of Molesworth.

*Devon.*—The Queen v. The Inhabitants of Holne.

*Essex.*—The Queen v. The Inhabitants of Saffron Waldon.

*Bucks.*—The Queen v. The Churchwardens, &c., of Aylesbury with Walton.

*Worcestershire.*—The Queen v. The Inhabitants of St. Peter, Droitchurch.

*Middlesex.*—The Queen v. The Inhabitants of St. Giles-in-the-Fields.

## SITTINGS OF THE LORD MAYOR'S AND SHERIFFS' COURTS, &c. 1846.

### LORD MAYOR'S COURTS.

1846, January 24.	1846, June 17.
February 20.	July 27.
March 21.	September 23.
April 21.	October 20.
May 8.	November 21.

### SHERIFFS' COURTS.

1846, January 8, 15, 22.	1846, July 9, 23, 30.
Feb. 5, 12, 19, 26.	August 15.
March 7, 19, 28.	September 19, 24.
April 4, 23, 30.	October 8, 24.
May 9, 14, 28.	Nov. 12, 19, 26.
June 4, 13, 25.	Dec. 3, 12, 17.

## THE EDITOR'S LETTER BOX.

OUR further extended space enabled us last week to devote no less than twelve pages to the Analytical Digest, and but for the sittings and cause papers, we should have given almost all our usual variety of original articles and information. In the present number the Digest has scarcely encroached on the other parts of the work.

By this new arrangement our readers will have in each half-yearly volume about 100 pages more than hitherto, composed of matter which we trust will be deemed peculiarly valuable, so arranged as to be conveniently perused from week to week, and by a table of titles and list of cases, readily referred to at the end of each volume. The notes on these cases will follow without delay.

"A New Subscriber" is referred to the Incorporated Law Society, where a room is appropriated, once a week, for legal discussion by the articulated clerks of members.

"A Student" should send his suggestions and his name to the Secretary of the Law Society.

"An Attorney of the Palatine Courts" will find, we believe, that it is not matter of *supposition*, but of *fact*, that the stamp duty of 12*ol.* is required on the admission of a Palatine attorney into the superior courts at Westminster, though 6*ol.* may have been previously paid. We have not heard of the decision to which he refers.

We shall be able to give a full report in our next number of the judgment of the Master of the Rolls on the petition of Mr. Cotton, relating to the fees of barristers' clerks. His lordship said it did not appear necessary to make an order upon what was under the control of the parties or their solicitors, and which they might pay or not at their option, and upon which counsel themselves were able to prevent disputes. The petition was dismissed without costs; and we understand the fee in question has been returned.

# The Legal Observer.

SATURDAY, JANUARY 24, 1846.

———"Quod magis ad vos  
Pertinet, et noscire malum est, agimus."

HORAT.

## THE BENCHERS OF THE INNER TEMPLE.

THE Bar is in many respects a peculiar and anomalous profession. The conduct of its members in the discharge of their professional duties, is influenced by various regulations, rather understood and implied, than expressed or authoritatively prescribed. Many of those regulations—the result of extensive experience, and founded on principles equally beneficial to the public and the profession—are nevertheless of a nature which it would not be easy to render intelligible, much less satisfactorily to explain to the general public. For this, amongst other reasons, when a collision, which appeared to many considerate members of the profession to have been unnecessarily produced, but which is now happily and properly terminated, took place between a portion of the circuit bar and the newspaper press, we refrained from taking any part in the discussion; not that we felt any difficulty in forming an opinion on the subject matter, or were regardless of the consequences of the quarrel, but because we conscientiously believed that the honour and interests of the profession were best consulted by abstaining from such a discussion.

Entertaining these views, we advert, confessedly with some reluctance, to certain recent proceedings of the benchers of the Inner Temple, which have unfortu-

nately, though perhaps necessarily, become the subject of observation beyond the limits of the profession. The species of governmental control exercised by the benchers of the several inns of court as respects the bar, renders the constitution and proceedings of those bodies of great professional and public interest. As succinctly stated in a document to which we are about to direct attention, "they are the trustees of large funds, as well as the arbiters of the discipline and professional honour of the bar, and they are invested with the power of allowing or rejecting claims for admission to the bar, and of disbarring any member of it who, in their judgment, has been guilty of misconduct." That the peculiar, extensive, and delicate powers conceded to, we apprehend, rather than directly bestowed upon, the benchers of the inns of court, have been exercised with exemplary moderation and prudence for a long series of years, is tolerably manifest, when it is considered how rarely, and at what distant intervals, the discharge of those functions has occasioned any complaint, whether well or ill founded. This result is mainly to be ascribed to the constitution of the governing bodies; and any resolution which operates to exclude particular individuals from the bench of the inn, must sooner or later alter the character of the institution.

The benchers of all the inns of court are self-elected, but the mode of election to the bench of the Inner Temple is peculiar to that inn: it is by ballot, and one

black ball excludes. When this objectionable and invidious mode of election was established at the Inner Temple, has not been stated, but the fact of its existence has only become known to the great body of the profession by recent events. It had been the uniform practice in the Inner Temple, as well as the other inns of court, to elect to the dignity of benchers those members or the profession who were honoured by the Crown with the rank of Queen's Counsel. The first instance of an exception from what had previously been considered the rule, occurred only three or four years since, when the name of a member of the Inner Temple, practising at the Chancery bar, and who had just then been honoured with a silk gown, was regularly submitted to the benchers of that inn, who declined to elect him. This has been followed by a similar instance within the last year, the rejected candidate for the bench having been honoured with a silk gown, and practising at the common law bar. The grounds of rejection in both those cases are only known through public rumour; and respect for the benchers of the Inner Temple, as well as a sense of justice to the rejected candidates, precludes us from giving extended publicity to statements, the accuracy of which we possess no means of investigating. It may be safely asserted, however, that in the minds of a large number of the members of the profession, the alleged grounds of exclusion do not afford an adequate justification for the annoyance and mortification—we shall not say humiliation—which the proceedings of the bench has occasioned to the rejected candidates. Without professing to decide upon the merits of either of the cases alluded to, we do not hesitate to state, that the discussion of those cases has created an almost unanimous opinion in the profession, that the mode of election to the office of bencher at the Inner Temple is objectionable. If any proof were required on this point, it is found in the address which we annex, presented during the present week, to the benchers of the Inner Temple, signed by above one hundred barristers of the society, comprising a majority of those who are best known to the profession and the public. The sentiments we entertain on the matter are so judiciously and temperately expressed in the document to which we refer, that it leaves little more for us than to add the expression of an earnest wish,

that the benchers should, without hesitation or unnecessary delay, adopt a suggestion respectfully made to them by a body of gentlemen whose opinion on any matter, we are satisfied, the benchers would be the first to admit, is well entitled to consideration. The abandonment of a mode of election which, however carefully and conscientiously acted upon, is open to so much suspicion and misconstruction, is a concession to the feelings of the profession which the benchers of the Inner Temple, we trust, will gladly make, as it would be equally desirable, in order to protect the character of those who exercise the power, as well as those who may hereafter be subjected to it.

*To the Benchers of the Honourable Society of the Inner Temple.*

The undersigned barristers of the Inner Temple take the liberty of requesting the attention of the bench to the subject of the present mode of election to the office of bencher, which has been recently brought under the notice of the public.

They assume the mode of election to be, as generally supposed, by ballot, and that one black ball excludes.

This mode of election has been occasionally adopted by the members of clubs formed exclusively for social purposes; but it is submitted that there is no analogy between associations of this kind and the bench of an inn of court. The social intercourse which takes place between the benchers is only an incident to their position. They are constituted for very different purposes. They enjoy peculiar rights and advantages, and exercise functions of great importance to their profession and the state. They are the trustees of large funds, as well as the arbiters of the discipline and professional honour of the bar: and they are invested with the power of allowing or rejecting claims for admission to the bar, and of disbarring any member of it who, in their judgment, has been guilty of misconduct. It is believed that no other instance can be found of a body with similar powers and duties, to which the admission is not either of right, or by some mode of open election.

The undersigned beg leave to notice one other broad distinction between the case of admission to the bench, and that of admission to private clubs and societies. In the latter, the candidate is under no compulsion to incur the chance of rejection: he encounters the ordeal of the ballot by his own free choice. Candidates for the bench are very differently circumstanced. The greater number are such as claim the honour on being appointed Queen's Counsel. These cannot decline claiming it without incurring a self-inflicted degradation in the eyes of the profession: yet they cannot claim it in the Inner Temple without running the risk of injurious exclusion by the

secret act of a single bench. It is respectfully submitted, that it is no ordinary grievance for men to whom an honourable estimation is of the highest consequence, to be exposed to so painful an alternative.

That the rule under consideration had never, so far as the undersigned are aware, been acted upon at all until a very recent time, is a strong proof of the moderation and honourable principle which have governed the conduct of the bench,—a strong proof, confirmed by the experience of the other inns of court, (where the rule does not exist,) that it is unnecessary,—but assuredly no argument in favour of it; for it is impossible not to foresee that, when once such a rule, after long lying dormant, is practically revived, its application will probably be repeated, and certainly feared.

The undersigned are sincerely anxious that they may not be considered as actuated by any spirit of undue interference. Such a representation as the present cannot, in their opinion, be considered improper in a matter in which any member of this inn may at some future day have a direct personal interest. Nor do they question the power claimed by the benchers—great as it is—erecting them, in a certain sense, into a court of appeal from the Lord Chancellor's appointments. The object of the present application is merely to press the expediency and justice of establishing a better method of exercising that power; and, with this view, the undersigned pray the benchers to take into consideration the speedy adoption of such mode of election as they shall, in their wisdom, think best adapted to maintain at once their own independence and protect candidates from being excluded on insufficient grounds.

*Inner Temple, January, 1846.*

## LECTURES ON THE REAL PROPERTY AMENDMENT ACT.

MR. CAYLEY SHADWELL, on commencing his 6th Lecture, observes, that since the passing of the 4 & 5 Vict. c. 21, entitled "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same parties," the old form of conveying by two deeds, the lease and the release, had been almost entirely laid aside, and the conveyance by the single deed, a statutory release with a reference to the act, substituted in its place.

To this act, however, there were two objections:—one, that it did not apply to the case of corporations; for a corporation which previously had always been made to convey by feoffment and livery of seisin, not being considered to have the power of conveying by lease and release, of course could not be allowed to convey by the form given by the statute,

which was only a substitute for lease and release. The other objection was, that, as to make the release, the single deed, available, it was necessary that it should contain a distinct reference to the statute, it must now and then happen from careless or unskilful practice, that a deed would be inoperative from the omission of the reference, and that this was a consequence which it would be proper to prevent. These objections to the Lease for a Year Act, the repealed statute, the Transfer of Property Act, attempted to deal with, but in the opinion of the profession not successfully. The way in which the present act met them was extremely ingenious, and as far as the lecturer could see, effective; but at first sight it certainly did appear somewhat singular.

The 2nd section of the Real Property Amendment Act, 8 & 9 Vict. c. 106, enacted "That after the 1st of October, 1845, all corporeal tenements and hereditaments should, as regarded the conveyance of the immediate freehold thereof, be deemed to lie in *grant* as well as in *livery*."

The characteristic difference hitherto between corporeal and incorporeal hereditaments had been, that while corporeal hereditaments, houses, and land, could be conveyed only by public, actual, visible, bodily transfer,—the livery of seisin, as it was called,—or by those deeds which the ingenuity of lawyers had invented as a mode of evading the necessity of livery of seisin, of which the lease and release were the principal; incorporeal hereditaments, an annuity, a right of way, or a right of presentation to a living, &c., which exist only in the mind's eye, and did not admit of being seen or felt, and consequently were incapable of being the subject of livery of seisin, had from the earliest times had the peculiarity of being conveyed by deed alone, and were incapable of being conveyed in any other manner, and the proper deed by which they were conveyed was, the simple deed of gift or grant as contradistinguished from the feoffment and livery, the bargain and sale, the covenant to stand seised, or the lease and release. This difference was expressed by saying, that corporeal hereditaments lie in livery and incorporeal hereditaments lie in grant. To say, therefore, that henceforth corporeal hereditaments should, as far as regarded conveyance, thenceforth lie in grant, was to say, that like incorporeal hereditaments they might be conveyed by the deed of gift or grant alone, which formerly they could not be. It did seem a little odd at first to enact, that words which formerly meant one thing should thenceforth mean another thing, but any such criticism was overbalanced by the convenience of the device, meeting, as it did, completely the two objections that there were to the Lease for a Year Act. For corporations, who, like individuals, could convey incorporeal hereditaments by deed of grant, might now also by deed of grant convey corporeal hereditaments, and no new statutory form of deed being created, the necessity for the reference to the statute was done away with.

Mr. Bellenden Ker, in his letter, after stating the several objections that had been taken to the corresponding enactment of the repealed statute, said,—

“The general object of section 2 of the proposed bill is the same with that of the corresponding section of the Transfer Act, namely, to give to all freehold lands in possession the capacity of being transferred without any of those forms or solemnities which occasion expense and trouble, but have no essential connexion with the act of transfer. A large class of freehold hereditaments is by the existing law, and has, from the remotest antiquity, been invested with this capacity to the extent of being transferable by the observance only of those forms or solemnities which are included in the execution of an ordinary deed. The hereditaments so circumstanced are technically said to lie in grant, while the hereditaments to which the law has hitherto denied the capacity of being transferred by deed, are technically said to lie in livery. It has never been proposed that the class of property with which this section deals, should be made transferable by any mode less formal than a deed. We have, therefore, considered, that the most direct and the most simple means of obtaining the object proposed, is to impart to corporeal hereditaments, that is, to hereditaments which lie in livery, only the capacity of being transferred by deed, by providing, that as regards the conveyance of the immediate freehold thereof, they shall be deemed to lie in grant as well as in livery. The effect of the clause will be to render a reference to the Lease for a Year Act of 4 & 5 Vict. c. 21, unnecessary in the case of corporeal hereditaments.

Mr. Davidson, in his *Precedents of Conveyancing*, 2nd edition, p. 59, after pointing out the doubts and difficulties that related to the corresponding part of the repealed statute, summed up his observations on the 2nd section of the present statute thus:—

“The new act does not abolish any of the ancient modes of conveyance, but only extends the power of conveying by grant to the immediate freehold of corporeal hereditaments; it will, therefore, still be open to the practitioner to convey by lease and release, or by a release referring to the statute 4 & 5 Vict. c. 21, or by feoffment with livery of seisin or bargain and sale inrolled; but the superior convenience of conveying by grant, will probably immediately and completely throw all other modes of conveyance out of use.”

The new act came into operation on the 1st October, 1845, and if Mr. Davidson's account of this section be correct, they ought all to be using the form that this act allows of, and Mr. Shadwell said he had nothing to say against the section; it appeared to him to effect its object, but nevertheless, he must confess, that in his own practice he had not as yet settled

any drafts according to it. Though he did not himself see any objections to the clause, it did not therefore follow that subtler heads than his own might not discover them, and accordingly, till he saw clearly what others were doing, he should continue as before to make his reference to the Lease for a Year Act, which was only the addition of half a dozen words.

As regarded corporations, the alteration was of considerable importance in practice, particularly as to the freehold leases which they were perpetually granting, and which hitherto had always been by feoffment and livery, but which now, under the new act, might be by deed of grant only.

The question as to the imposition of the lease for a year stamp, in addition to the conveyance stamp, appeared to remain in the same position as it was on the passing of the Lease for a Year Act. Under the present act, wherever it would have been previously necessary to convey by lease and release, there the lease for a year stamp must be affixed, where there was no such necessity it might be omitted.

The progressive duty stamp on the lease for a year was never required in any case; a doubt as to the necessity of imposing it under the repealed statute, (though a most preposterous one,) was one of the difficulties that prevented the repealed statute from working properly in practice.

As this 2nd section related to a point of immediate practice in the alteration of conveyancing forms; the lecturer said, he had stated what had occurred to him upon it at greater length than perhaps its intrinsic importance deserved. The letter of the learned framers of the act to which he had so often referred, and the works of Mr. Davidson and Mr. Neale, contained together such an ample commentary upon the act, that he should think it a work of supererogation to go again over the ground, that they had so well occupied, either by citing passages from their works or by reproducing their observations in other language, and he should confine himself, therefore, to points which appeared to him they had either not touched upon or not explained with sufficient fulness, or in which he had the misfortune to differ from them in opinion.

One of the points then of the new statute to which Mr. Shadwell wished to draw attention, was the power given by the 6th section of *disposing by deed of a right of entry*.

Under the law as it stood, previous to the late alterations, the rightful owner who had been dispossessed of his estates could neither devise his rights by will nor dispose of them by deed.—He could not dispose of them by will.—This appeared to have been settled after much discussion and considerable opposition, by the case of *Goodright v. Forrester*, 8 East, 564. In that case there being a tenant for life with reversion to another, the tenant for life levied a fine, *come ceo*, &c. which had the effect of dispossessing the reversioner of his reversion

and turning it into a mere right of entry: while so dispossessed, he made his will, devising the property, and whether that was a good devise was the question. There was a division of opinion among the judges: Sir James Mansfield, the Chief Justice, holding that the devise was good, the other judges that it was not. The case was decided upon another point. But it has always been considered that the majority of the judges were in the right in holding, that a right of entry was not capable of being devised by will. Mr. Jarman, vol. 1, p. 42, cites this case as an authority for the proposition. He cites also to the same effect, *Cave v. Holt*, 3 Ves. 669; *Attorney-General v. Vigors*, 8 Ves. 282, (which gives the opinion of Lord Eldon); *Doe d. Soutter v. Hall*, 2 Dowl. & Ry. 38.

The new statute of wills altered the law and settled this question, as far as devises went, by enacting in the general enabling clause, that the power of devising should extend "to all rights of entry for conditions broken and other rights of entry." 1 Vict. c. 26, s. 3.

There could not, the lecturer thought, be any question that it was an improvement thus to give the power of disposing of rights of entry by will, but whether or no, it might have been proper to give a similar right of disposing of rights of entry by deed, as was done by the act they were then considering, was a question that appeared to admit of a much more extended consideration.

The 6th section of the Amendment Act, amongst other things, provided, that after the 1st October, 1845, "a right of entry, whether immediate or future, and whether vested or contingent into or upon any tenements or hereditaments in England of any tenure, may be disposed of by deed."

The difficulty that was likely to arise upon this part of the act, related to the bearing that it might have upon what was always previously understood to be the law on the subject of *maintenance* and *champerty*.

Was the new act intended to alter the law on these subjects? and had it altered it? and if it had, to what extent? When last year he was commenting upon the corresponding part of the repealed statute, it did not occur to him that these words bore that extended signification which he now thought it to be very difficult to deny that they bore. He had then confined himself wholly to the consideration of rights of entry for condition broken, such as the rights of the lessor to enter upon his lessee for nonpayment of rent or other breach of covenant; and such rights of entry, it did appear to be but reasonable that a landlord should have the power of conveying to a purchaser along with the rest of the estate. But the words used are too general to be so restricted in their meaning:—the act did not indeed say like the statute of wills, "Rights of entry for condition broken and other rights of entry," but it said generally "a right of entry," which must be construed to mean "any right of entry" If, however, it were the true con-

struction of the act, that it enabled a person, though dispossessed of his property, either to sell it or to make it the subject of a mortgage or other arrangement by deed, the alteration was a considerable one, and might lead to important consequences. Hitherto, a mere claim or title to landed property could not be sold. Under the old feudal law it was a grave offence even to attempt to do it, and there were various pains and penalties by which it was visited. In our modern system, indeed, we never heard of these pains and penalties being inflicted, but nevertheless, the attempt to sell or otherwise dispose of a mere claim or right to land had hitherto always been resisted, and the agreements and deeds by which it was sought to carry any such arrangement into effect had been set aside and treated as nugatory, and till within a period comparatively recent, the policy of this part of our system had been defended and approved of by the commentators on our laws and constitution.

To appreciate rightly, the change which it appeared that this late statute would introduce into the law, it might be proper to take a review of the subject as it previously stood.

To buy or sell a title to land, even although the title turned out to be the right one, was an offence, and the thing could not be done. Co. Litt. 369 a. The buying or selling of titles to land appears to have been considered as one branch of the offence called *champerty*, *campi partitio*, division of the field; *champerty* itself being one of the kinds of the general offence of *maintenance*, which was that of unlawfully sustaining or supporting a plaintiff or defendant in a cause pending in suit, by word, writing, countenance, or deed; and it was said that *champerty* was the most odious species of *maintenance*. 2 Inst. 208, 563. Blackstone describes these offences against the law, and in a manner that leads one to suppose that he approved of the principle upon which they had been prohibited. To prohibit one man from buying another man's title, or supporting another man's suit, was a policy which seemed to have been clearly right in the times of our early history, when the great fear was, that of the strong oppressing the weak, and even overawing the court of justice in which the weak sought for redress; and what so ready an instrument of oppression in the hands of the unscrupulous, as an attack under the forms of law?—but whether the same policy that was right formerly was also right then, was a point upon which there would probably be great difference of opinion: on the one hand, to permit the selling or bargaining about titles or claims, would be to encourage a great deal of useless litigation that was now prevented; on the other, to prevent real *bonâ fide* claimants from raising money on their just rights, must in many cases amount very nearly to a denial of justice. Blackstone, in the 10th chapter of his 4th volume, in treating of offences against public justice, describes *maintenance* as the offence of officious intermeddling in a suit that in no



way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it,—a practice that was greatly encouraged by the first introduction of uses. “This is an offence against public justice, as it keeps alive strife and contention, and perverts the remedial process of the law into an engine of oppression. And therefore, by the Roman law it was a species of the *crimen falsi* to enter into any confederacy or do any act to support another’s law suit, by money, witnesses, or patronage.”

Of champerty he says,—“Champerty, *campi partitio*, is a species of maintenance, and punished in the same manner, being a bargain with a plaintiff or defendant, *campum partire*, to divide the land or other matter sued for between them, if they prevail at law, whereupon the champertor is to carry on the party’s suit at his own expense. Thus champart, in the French law, signifies a similar division of profits, being part of the crop annually due to the landlord by bargain or custom. In our sense of the word, it signifies the purchasing of a suit or right of suing, a practice so much abhorred by our law, that it is one main reason why a chose in action, or a thing of which one hath the right but not the possession, is not assignable at common law, because no man should purchase any pretence to sue in another’s right. These pests of civil society that are perpetually endeavouring to disturb the repose of their neighbours and officiously interfering in other men’s quarrels, even at the hazard of their own fortunes, were severely animadverted on by the Roman law. ‘Those who improperly interfere in the suits of others for the purpose of sharing in the proceeds of the litigation are brought within the operation of the Julian law, against private violence,’ and they were punished by the forfeiture of a third part of their goods and perpetual infamy.” (Pandects.)

Champerty and maintenance were both of them offences at common law, 2 Inst. 208. There were also several statutes enacted against the 3 Edw. 1, 1st statute of West. c. 25. No officer of the king shall commit champerty to have part of the thing in question. Same stat. c. 28—clerks shall not commit maintenance; and there were several others, but the principal and most sweeping statute and the one which in express words prohibited what, if this intimation of the statute were not altogether wrong, the new statute allowed, was the 32 Hen. 8, c. 9. This stat. expressed very strongly what was the ancient feeling on the subject of buying titles to land, and Mr. Shadwell quoted the first two sections.

In modern times (he said) little had been heard of anything being done under the penal provisions of this statute, although in Hawkins’ Pleas of the Crown there are a great many cases cited as relating to this subject, and a great many distinctions taken as what was and what was not within the meaning of the statute. But though the penal jurisdiction had fallen into disuse, the spirit of the statute,

so to speak, had been preserved by our courts, and there were many cases to be found, in quite modern times, in which the doctrine was clearly recognised, that no contract or bargain tainted with maintenance or champerty could be allowed.

The principle extended to personal as well as real property; thus, in *Stevens v. Bagwell*, 15 Ves. 139, the subject matter was the share of a naval officer in the prize money on the capture of a fort in the East Indies. The claim had been very much litigated, and the suit being an expensive one, the representatives of the officer, who was then dead, entered into an agreement with their prize agents to make over to them one-fifth of what might be recovered, in consideration of the agents’ agreeing to guarantee them against costs. The Master of the Rolls, Sir William Grant, decided that the agreement was void from the beginning; he said that it amounted to that species of maintenance which is called champerty, viz., the unlawful maintenance of a suit in consideration of a bargain for a part of the thing or some profit out of it. In *Wallis v. The Duke of Portland*, 3 Ves. 501, Lord Loughborough said, that maintenance in general was not *malum prohibitum* merely, but *malum in se*, that the prohibition was part of the common law, not confined to courts of common law, but extending also to courts of equity, and even to the ecclesiastical courts. In a case also cited by Lord Eldon, in giving judgment in *Wood v. Downes*, 18 Ves. p. 127, there was a singular instance of the tendency to extend the prohibition against maintenance and champerty to the utmost limits. His lordship gives the case thus:—“In a case in 1767, not in print, *Strachan v. Brandon*, the plaintiff, by descent a Swede, but born in England, claimed, as heir of a Swede, a large estate in Sweden; being in indigent circumstances, he applied to Willis, an attorney, who agreed to undertake his cause if a fund could be procured. A subscription was proposed, and Willis became one of the subscribers, upon these terms: that the plaintiff, if he succeeded, should pay the subscribers, and among them Willis, double the sums advanced, and if he failed, the subscribers were to lose their money. A bond was given, with a penalty of 4,000*l.*, and 1,000*l.* was advanced. That case was before Lord Northington, who decreed that the bond could not be permitted to stand as a security for more than the 1,000*l.* actually advanced, stating in his decree, that this transaction, though not strictly champerty, was so near it that it could not be permitted to prevail, declaring that it savours of champerty, and is therefore dangerous to public justice.”

In most of the cases cited, the parties between whom the illegal agreement was made stood to one another in the relation of attorney and client, or principal and agent. But it was necessary to distinguish the doctrine that regulated transactions between attorney and client, or principal and agent, from this doctrine prohibiting maintenance and champerty. Any

conveyance of property, whether in possession or not, from client to attorney, or from principal to agent, would be liable to be considered as inoperative, except as a security for what might be found due on a balance of account. But the prohibition of maintenance and champerty stood upon a very different ground.

There was one case, however, on this doctrine of champerty in which the parties did not stand in any such relation to each other. That case was *Powell v. Knowler*, 2 Atkyns, 224, the marginal note of which was, that "where a person undertakes to make out the title of another to an estate, and is to have a part of the lands as a satisfaction for his trouble, though the agreement for this purpose is artfully drawn, in order to keep it out of the statutes of champerty, he will not be entitled to have a specific performance in equity, but will be left to his remedy at law."

Other cases on this subject were, *Harrington v. Long*, 2 Myl. & Kee. 590; *White v. Gardner*, 1 Younge, 385; *Puse v. Puse*, 7 Clark & Fennell, 274; *Bell v. Smith*, 5 B. & Cress. 188; *Stanley v. Jones*, 7 Bing. 367.

These laws against maintenance and champerty were attacked with great vigour by the late Jeremy Bentham, the great opponent of all legal and constitutional prejudices of the last century, who, in his *Defence of Usury*, 2nd edit. p. 117, c. 12, covers them with most unsparing ridicule. He gives an instance, as within his own knowledge, of a young man who, just upon his coming of age, had been deluded by the false representations of his guardian into conveying to him an estate, of the value of which he was entirely ignorant, but who, when coming to the knowledge of the real circumstances, and seeking to be relieved from the transactions in equity, found himself without means to carry on the suit. He found persons willing to advance him the money at a high premium, but the bargain was broken off because these laws prevented any such bargain from being legally made; and, in consequence, he was compelled to submit to a most inadequate compromise, to the great disgrace, as Mr. Bentham contends, of the country that maintains a law so unsuited to the present state of society.

The Real Property Commissioners appear to have taken much the same view as Mr. Bentham. In their first report they say: "At present the true owner of real property, while wrongfully dispossessed, is not allowed to devise or transfer it; such restraints, we think, may be safely relaxed. In rude times they had some colour of policy, as they tended to prevent wealthy and powerful men from oppressing persons in possession by acquiring litigious claims to their estates; they have long merely operated oppressively to persons out of possession, by preventing them from disposing of their property, and sometimes depriving them of the means of recovering it. The laws of champerty and maintenance likewise seem unsuited to the present state of society."

As to devises, the lecturer observed, that the

recommendation of the Real Property Commissioners had been carried out by the new Statute of Wills; and it seemed to him that their other recommendation had been carried into effect by this present statute, at least to some extent, for the act expressly authorised what the act of Henry 8th expressly forbade, namely, the selling of a right or title to land.

The Real Property Commissioners, it will have been observed, appear to treat the buying or selling of a title to land as something distinct from champerty. But in the passage cited from Blackstone it appears to be treated as one kind of champerty, and so also in the commentary of Lord Coke; and at any rate, the statute of Henry 8, which expressly prohibits the buying and selling of titles to land by a variety of penalties, at the same time refers to and confirms all the previous statutes against champerty and maintenance; thus, as it were, embedding in those old laws this buying and selling of titles to land. Under these circumstances, one should have expected that, in changing the law, there would have been some reference to these old statutes, and that if not prepared to alter the whole law as to maintenance and champerty, at least there would have been a repeal of so much of the statute of Henry 8th as prohibited the buying and selling of titles to land. In these difficulties the letter of the learned framers of the statute gave no assistance, for it did not even allude to the point, nor did either Mr. Davidson or Mr. Neale say anything on the subject.

In this silence, the lecturer had felt half inclined to doubt the accuracy of his own construction, and to think that the new statute did not apply to rights of entry on estates of which the owner has been dispossessed. But still, there the words were,—"a right of entry may be disposed of by deed," and there was nothing to cut them down to rights of entry for condition broken. His opinion on this part of the act was, that it did authorise the selling of an estate of which you were dispossessed, if in the sale there were no reference to a suit; but that it did not make any further alteration in the laws against champerty and maintenance.

---

## BARRISTERS' CLERKS' FEES

---

WE refer to the decision of the Master of the Rolls, at p. 268, *post*, on the petition of Mr. Cotton. Both branches of the profession are, we think, much indebted to the Master of the Rolls for the consideration he has bestowed on the subject. His lordship, seeing he had no jurisdiction in the *particular* case submitted to him, might have declined to pronounce any opinion; but he has gone into the whole question of the clerks' fees, and his judgment will have the effect of preventing much unpleasant altercation in future. The bar, reluctant to interfere in such matters, will now be relieved

from such disputes, which were calculated to disturb the good understanding that ought to subsist between the two branches of the profession. These fees are individually of small amount, but it often happens that comparative trifles irritate more than important matters, and we are glad that the controversy is terminated by this judicial operation.

Mr. Cotton is entitled to the thanks of his brethren, for the zeal and perseverance with which he brought the subject before the court. We believe the barristers' clerks, as a body, took no part in the controversy, and are satisfied with the scale of fees that the court has sanctioned.

## MEMOIR OF THE LATE MR. JUSTICE STORY.

WE have delayed our memoir of this distinguished Jurist until we had collected some more biographical materials than were at first presented to the public. An eloquent eulogium on the character and attainments of Mr. Justice Story appeared in the Boston paper soon after his decease, from the pen of one of his intimate friends and pupils, Mr. Charles Sumner, whose visit to Europe is well remembered by several of our fraternity. We shall avail ourselves of part of Mr. Sumner's remarks, and add some particulars collected from other sources,\* regarding the early life and professional progress of this great ornament of the law, who was equally eminent as a judge, an author, and a teacher.

Joseph Story was born in Marblehead, Massachusetts, September 18, 1782, and graduated at Harvard College in 1798. His father, Dr. Elisha Story, served in the army during the revolutionary war. His son studied law under the direction of Judge Putnam, and established himself in the practice of it in Essex county. He soon entered into political life, being chosen a member of the Massachusetts Legislature in 1805, and he was afterwards, while yet young, elected, to the satisfaction of all parties, Speaker of the house. At this time he was connected with the Democratic party, and was in fact their leader in Massachusetts. In 1809 he was elected a representative to congress, to fill a vacancy in Essex, south district. He served in this body with much distinction, but declined a re-election. In 1811 he was appointed by President Madison a judge of the Supreme Court of the United States, and then severed himself from all political connexion. His principles

subsequently were conservative. The wisdom of the selection was immediately indicated by the distinguished ability which he displayed, and each succeeding year added to the splendour and extent of his judicial fame.

In 1830 he was appointed Dane Professor in the law school of Harvard University, on the munificent foundation of his friend Mr. Nathan Dane, of Beverley, and he continued to discharge the duties of this office with remarkable ability and success till the day of his death. His reputation drew together a great number of students from all parts of the union, and the unprecedented success of the school is to be attributed almost entirely to his excellent lectures, and the kind and paternal care he had of his pupils.

In forming an estimate of the character of this distinguished personage, we should not lose sight of the great importance of his position as a judge in the American States. There the whole executive and legislative body forms one great panderer to the proud and selfish feelings of the democratic majority. The only hope of individual freedom of action depends upon the integrity and firmness of the judges. In this country we have rarely occasion to notice the exhibition of those high qualities which are constantly required by an American judge in bearing up against the outcry of a people inflated with the fancy of their own omnipotence. Their writers and orators, in speaking of Mr. Justice Story, do not touch on this excellent point in his character, because it would involve reflections which few of them would venture to express against the tyrant mob. We believe, indeed, to the honour of our common profession, that the judicial body in America is the only independent power in the state.

"His lot is rare," (observes Mr. Sumner,) "who achieves fame in a single department of human action; rarer still is his who becomes foremost in many. Independent of the incalculable labours, of which there is no trace except in the knowledge, happiness, and justice which they helped to secure, the bare amount of the written and printed labours of Mr. Justice Story is enormous beyond all precedent in the annals of the common law. His written judgments on his own circuit, and his various commentaries, occupy 27 volumes, while his judgments in the Supreme Court of the United States form an important portion of no less than 34 volumes more.

"We are struck next by the universality of his judicial and other attainments. It was said by Dryden of a great lawyer in English history, Heneage Finch,—

Our laws, that did a boundless ocean seem,  
Were coasted all and fathom'd all by him.

But the so-called boundless ocean of that age was very limited compared with that on which the adventurer embarks in our day. We read, in Howell's Familiar Letters, that it had been said, only a few short years before the period of Finch, that the books of the common law might all be carried in a wheelbarrow! To coast such

\* Amongst other means of information, we are indebted to the report, in the *Morning Chronicle* of the 3rd Dec., of the meeting of the American bar.

an ocean were a much less task than a moiety of his labours whom we now mourn. Called upon to administer all the different branches of law, he showed a perfect mastery of all. His was universal empire; and wherever he set his foot, in the wide and various realms of jurisprudence, it was as a sovereign; whether in the ancient and subtle learning of real law, in the criminal law, in the niceties of special pleading, in the more refined doctrines of contracts, in the more rational systems of the commercial and maritime law, in the peculiar and interesting principles and practice of courts of admiralty and prize, in the immense range of chancery, in the modern but most important jurisdiction over patents, or in that most comprehensive of all great themes, public and constitutional law. There are judgments by him on each of these various subjects, which do not yield in value to those of any other judge, even though his studies and practice may have been directed to only one particular department of the law.

"But there is much of his character as a judge which cannot be preserved, except in the faithful memories and records of those whose happiness it was to enjoy his judicial presence. I refer particularly to his mode of conducting business. Even the passing stranger bears witness to his suavity of manner on the bench, while all the practitioners in the courts over which he presided so long, attest the marvellous quickness with which he habitually seized the points of a case.

"Nor should I forget the lofty *standard of professional morals* which he inculcated, filling his discourses with the charm of goodness. I first (says Mr. Sumner) knew him while I was in college, and remember freshly, as if the words were of yesterday, the eloquence and animation with which, at that time, in a youthful circle, he enforced the beautiful truth, that no man stands in the way of another. "The world is wide enough for all," he said, "and no success which may crown our neighbour can affect our own career." High in his mind, above all human opinions and practices, were the everlasting rules of right; nor did he ever rise to a truer eloquence than when condemning, as I have more than once heard him recently, that evil sentiment, 'Our country, be she right or wrong,'—which, in whatsoever form of language it may disguise itself, assails the very foundation of justice and virtue.

"I should now allude to his excellences as a *teacher of law*, that other relation which he sustained to jurisprudence. He had the rare faculty of interesting the young and winning their affections. I have often seen him surrounded by a group of youths, all intent upon his earnest conversation, and freely interrogating him on any matters of doubt. In his lectures and other forms of instruction he was prodigal of explanation and illustration; his manner, according to the classical image of Zeno, was like the open palm, never like the closed hand. He was earnest and unrelaxing in his efforts, patient and gentle, while he

listened with inspiring attention to all that the pupil said. Like Chaucer's clerk,—"And gladly wolde he lerne, and gladly teche." Above all, he was a living example of love for the law,—supposed by many to be unloveable and repulsive,—which seemed to burn brighter under the snows of advancing years; and such an example could not fail to touch with magnetic power the hearts of the young."

In a recent letter to Mr. Tristram Kennedy, the Principal of the Dublin Law Institute, Mr. Justice Story thus writes:—

"I have been long persuaded that a more scientific system of legal education, than that which has hitherto been pursued, is demanded by the wants of the age and the progress of jurisprudence. The old mode of solitary, unassisted studies in the inns of court, or in the dry and uninviting drudgery of an office, is utterly inadequate to lay a just foundation for accurate knowledge in the learning of the law. It is for the most part a waste of time and effort, at once discouraging and repulsive. It was, however, the system in which I was myself bred; and so thoroughly convinced was I of its worthlessness, that I then resolved, if I ever had students, I would pursue an opposite course. It was my earnest desire to assist in the establishment of another system, which induced me to accept my present professorship in Harvard University, thereby burthening myself with duties and labours, which otherwise I would gladly have declined.

"The system pursued by my learned brother, Mr. Professor Greenleaf, and myself, in our juridical instructions, has had the most entire success. The Law Institution here has flourished far more than I ever dreamed it could in a country like America, where the administration of law is not, as with you, concentrated in Dublin, or in Westminster, or in Edinburgh, but spreads over the whole territory.

"Our system of instruction is not founded upon written lectures, (which, I am persuaded, is a very inadequate mode,) but upon oral lectures connected with the daily studies of the students in the various works which they study, and in the lecture room where they are all assembled in classes, and where they undergo a daily examination; and every lecture grows out of the very pages of the volume which they are then reading. In this way difficulties are cleared away, additional illustrations suggested, new questions propounded, and doubts raised, and occasionally authorities criticised, so that the instructor and the pupil move along *pari passu*, and the pupil is invited to state his doubts, and learns how to master his studies.

"Whether the like system would answer as well with you, I am unable to say, but I can scarcely suppose that it could fail; and I may add, that our pupils are all satisfied with it, and make a progress in their studies—so cheering and so marked that it will not be relinquished."

The deceased was proud of his character as

a professor. In his earlier works he is called on the title-page, "Dane Professor of Law." It was only on the suggestion of the English publisher that he was prevailed upon to append the other title, "Justice of the Supreme Court of the United States." He looked forward with peculiar delight to the time, which seemed at hand, when he should lay down the honours and cares of the bench, and devote himself singly to the duties of his chair.

We must not omit the large *correspondence* which he had with all parts of the world, from his early and respected correspondent, our great Lord Stowell, to the time of Mr. Justice Story's decease. His talents, kindness, and frankness shone in his letters, and are in some respects the consolation of his sorrowing friends. Nor must we omit to mention the stream of visitors from all parts of the world to see our excellent friend as the pride of his country.

He began his career as an author early in life, by the publication of an excellent edition of Abbott on the "Law of Shipping." Soon after his appointment to the Dane Professorship, he published his "Commentaries on the Constitution of the United States," in 3 vols. 8vo. These were followed by a succession of treatises on different branches of the law, too numerous to be mentioned here, the extent and excellence of which, with the vast amount of legal learning displayed in them, leave it a matter of astonishment that they could be prepared within the short space of about twelve years, by a man who was all the while discharging, with great assiduity, the onerous duties of a judge of the Supreme Court of the United States, and a professor in the law school of the university. Among them were commentaries on the "Conflict of Laws," a work of great excellence; "Equity Jurisprudence," "Equity Pleadings," "Partnership," "Agency," "Bailments," "Bills of Exchange and Promissory Notes."

"In regarding the deceased as an author, Jurisprudence mourns one of her greatest sons,—one of the greatest, not only among those of his own age, but in the long succession of ages,—whose fame has become a familiar word in all lands where the law is taught as a science; whose works have been translated and commented on in several of the languages of the European continent, and have been revered as authorities throughout the civilized world. It was his rare lot, while yet alive, to receive, as from a distant posterity, the tribute of foreign nations to his exalted merit as a jurist.

"In his devotion to the science of law, he did not forget the claims of literature and general scholarship. His contributions to the *North American Review*, &c., collected in his "Miscellanies," show a thoughtful mind, imbued with elegant literature, glowing with kindly sentiments, commanding a style of rich and varied eloquence. There are many passages from these which have become the common-places of our schools. In early life he yielded to the fascinations of the poetic muse; and

here the great lawyer may find companionship with Selden; with Blackstone, whose *Farewell to the Muse* shows his fondness for poetic pastures, even while his eye was directed to the heights of the law; and also with Mansfield, of whom Pope has lamented, in familiar words,—*"How sweet an Ovid was in Murray lost!"*

"Two days before his last illness, he delivered in court a masterly judgment on a complicated case in equity. I saw him for a moment only on the evening preceding his illness. It was an accidental meeting, away from his own house. His words of familiar household greeting, on that occasion, still linger in my ears like an enchanted melody. The morning sun saw him on the bed from which he never rose again. Thus closed, after an illness of eight days, in the bosom of his family, without pain, surrounded by friends, a life which, through various vicissitudes of disease, had been spared beyond the grand climacteric, that cape of storms in the sea of human existence. The scales of justice which he had held so long, have fallen from his hands. The untiring pen of the author rests at last. The voice of the teacher is mute. The fountain, which was ever flowing and ever full, is now stopped. But let us listen to the words which, though dead, he utters from the grave,—*"Sorrow not as those without hope."* The righteous judge, the wise teacher, the faithful friend, the loving father, has ascended to his Judge, his Teacher, his Friend, his Father, in heaven."

On the day of the funeral of Mr. Justice Story, on the 12th of September last, at a meeting of the Suffolk bar, held in the circuit-court room at Boston, (Chief Justice Shaw in the chair,) Mr. Webster pronounced a just and eloquent eulogium on the deceased judge, from which we make the following extracts:—

"Mr. Chief Justice, one sentiment pervades us all. It is that of the most profound and penetrating grief, mixed, nevertheless, with an assured conviction that the great man whom we deplore is yet with us, and in the midst of us. He hath not wholly died. He lives in the affections of friends and kindred, and in the high regard of the community. He lives in our remembrance of his social virtues, his warm and steady friendships, and the vivacity and richness of his conversation. He lives, and will live still more permanently, by his words of written wisdom, by the results of his vast researches and attainments, by his imperishable legal judgments, and by those juridical disquisitions, which have stamped his name, all over the civilized world, with the character of a commanding authority. *"Vivit, enim, vivetque semper; atque etiam latius in memoria hominum et æræmone versabitur, postquam ab oculis recessit."*

"Mr. Chief Justice, there are consolations which arise to mitigate our loss, and shed the influence of resignation over unfeigned and heartfelt sorrow. We are all penetrated with gratitude to God, that the deceased lived so

long; and that he did so much for himself, his friends, the country, and the world; that his lamp went out at last without unsteadiness or flickering. He continued to exercise every power of his mind, without dimness or obscuration, and every affection of his heart, with no abatement of energy or warmth, till death drew an impenetrable veil between us and him. Indeed he seems to us now, as in truth he is, not extinguished, or ceasing to be, but only withdrawn; as the clear sun goes down at its setting, not darkened, but only no longer seen.

"This calamity, Mr. Chief Justice, is not confined to the bar, or the courts, of this commonwealth. It will be felt by every bar throughout the land, by every court, and, indeed, by every intelligent and well-informed man in or out of the profession. It will be felt still more widely, for his reputation had a still wider range. In the High Court of Parliament, in every tribunal in Westminster Hall, in the Judicatories of Paris and Berlin, Stockholm and St. Petersburg, in the learned universities of Germany, Italy, and Spain, by every eminent jurist in the civilized world, it will be acknowledged that a great luminary has fallen from the firmament of public jurisprudence.

"Sir, there is no purer pride of country, than that in which we may indulge, when we see America paying back the great debt of civilization, learning, and science to Europe. In this high return of light for light, and mind for mind, in this august reckoning and accounting between the intellects of nations, Joseph Story was destined by Providence to act, and did act, an important part. Acknowledging, as we all acknowledge, our obligations to the original sources of English law, as well as of civil liberty, we have seen, in our generation, copious and salutary streams turning and running backward, replenishing their original fountains, and giving a fresher and a brighter green to the fields of English jurisprudence. By a sort of reversed hereditary transmission, the mother, without envy or humiliation, acknowledges that she has received a valuable and cherished inheritance from the daughter. English justice admits, with frankness and candour, and with no feeling but that of respect and admiration, that he, whose voice we have so recently heard within these walls, but shall now hear no more, was of all men who have yet appeared, most fitted, by the comprehensiveness of his mind, and the vast extent and accuracy of his attainments, to compare the codes of nations, to trace their differences to difference of origin, climate, or religious or political institutions, and to exhibit, nevertheless, their concurrence in those great principles, upon which the system of human civilization rests.

"Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness, and the improvement and general progress of our race.

And whoever labours on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society.

"This is not the occasion, sir, nor is it for me to consider and discuss at length the character and merits of Mr. Justice Story, as a writer or a judge. But, in the homage paid to his memory, one part may come with peculiar propriety and emphasis from ourselves. We have known him in private life. We have seen him descend from the bench, and mingle in our friendly circles. We have known his manner of life, from his youth up. We can bear witness to the strict uprightness and purity of his character; his simplicity and unostentatious habits; the ease and affability of his intercourse; his remarkable vivacity amidst severe labours; the cheerful and animating tones of his conversation; and his fast fidelity to friends. Some of us, also, can testify to his large and liberal charities—not ostentatious or casual, but systematic and silent; dispensed almost without showing the hand, and falling and distilling comfort and happiness like the dews of heaven."

## NOTES OF THE WEEK.

### HILARY TERM EXAMINATION.

THIS examination took place on Thursday the 22nd instant. Master Walker of the Court of Exchequer presided, and the other examiners were, Mr. Edward Smith Bigg, Mr. Thomas Clarke, Mr. John Coverdale, and Mr. John Swarbrick Gregory.

The newspapers have been proclaiming a list of 160, but after deducting upwards of 50 who were examined in former terms, and nearly 30 who have not left satisfactory testimonials, there remained only 92 to be examined. Of these 89 attended. The examiners met again on Friday. Only 75 have been passed. One candidate withdrew, and 13 were postponed.

### LAW PROMOTIONS.

The Hon. James Archibald Stuart Wortley, youngest son of the late and brother of the present Lord Wharnccliffe, has been appointed Judge Marshall and Advocate-General, in the place of the Rt. Hon. John Nicholl, D.C.L., who has resigned that office. Mr. Wortley holds the rank of a Queen's Counsel, and is a member of the northern circuit.

### JOINT STOCK LIABILITIES.

It is scarcely necessary to call the attention of our readers to the verdict in the Exchequer, in the case of *Barnett v. Burdett*, under the direction of Mr. Baron Alderson, by which a member of a provisional committee has been held liable for the expences incurred in the business of a railway company. The facts being proved, there can, indeed, be no doubt of the legal conclusion.

## LEGAL EDUCATION.

## PROCEEDINGS OF THE MIDDLE TEMPLE.

At a Parliament holden this 16th day of January, 1846.

It is ordered, That the Report of the Committee on Legal Education be approved of and confirmed. And it is ordered that a lecturer be appointed, an examination instituted, and two exhibitions established in the manner and subject to the regulations recommended by the said report. And it is ordered, That it be referred back to the committee to approve of such further regulations and details as may be requisite for the said several purposes, and to report the same to the next parliament. And the committee are hereby empowered to take such steps as shall be necessary to render public the wish of this society, to receive applications from gentlemen desirous of becoming candidates for the office of lecturer, and also to communicate with the other societies on the subjects of this order.

"At a Parliament holden on the 21st November, 1845, a motion having been made by Master Bethell, of which the notice was as follows, viz:—

"That for promoting the legal education of the students of this house it is expedient that a lecturer be appointed for the purpose of reading on jurisprudence and the civil law; and that two or more exhibitions be founded for the benefit of such students as shall on examination previous to their call to the bar show the greatest proficiency in the subjects of such lectures; and that such lectures be open to the attendance of students of the other inns of court; and that from and after the 1st day of Easter Term, 1846, no student of this house be called to the bar who shall not have attended one of such terminal course of lectures; and that the societies of the other inns be requested to concur with this society in the establishment of similar lectureships in other branches of law; and that it be referred to a committee to approve of proper regulations for carrying the above objects into effect:

"It was resolved and ordered by the bench,—

"That it is expedient that steps be taken for promoting the legal education of the students of this house; and that it be referred to a committee to ascertain and report to the bench the best mode of carrying this resolution and the objects mentioned in the above notice of motion into effect."

"Under the aforesaid order the committee have made the following report:—

"To the Parliament, &c.

"Your committee having entered on the enquiry directed to them, as to the means to be adopted 'for promoting the legal education of the students,'—recommend that the steps to be taken by the Middle Temple should be such as are best adapted for the commencement of a sound and comprehensive legal education; for they have reason to hope that the plan, thus rightly begun, will be followed out and completed by the proceedings of the other societies; so that the institutions which will be finally

established by the several inns shall afford to the students collectively a complete course of legal instruction. The committee have also adverted to the acknowledged deficiency which has long been felt to exist in the education of English lawyers, in consequence of their entire neglect of the study of jurisprudence and the civil law; although in all places where law has been or is taught as a science, these subjects have uniformly formed the first and one of the most essential parts of legal education. From these, and many other reasons to the like effect, the committee are induced to recommend that the first step for the promotion of legal education to be taken by this house, should be the appointment of a reader on jurisprudence and the civil law. To illustrate the benefits which, in the view of the committee, would result to the legal education of the students from such an appointment, it may be well to explain the sense in which the committee use the terms 'civil law' and 'jurisprudence'; and their consequent expectation of the province and duties of the lecturer.

"By the term 'jurisprudence,' the committee mean to indicate general jurisprudence, as distinguished from the particular jurisprudence of any individual nation; and which, in further explanation of their meaning, they would divide into positive jurisprudence, or the philosophy of positive law, and comparative jurisprudence, or the exhibition of the principles of positive law in an embodied form, by a comparison of the jurisprudence of modern nations. In the first, they would have the lecturer also include the important subject of the 'interpretation of laws,' and under the latter head of comparative jurisprudence, the 'conflict of laws' may with propriety be comprised.

"By the term 'civil law,' the committee wish to indicate what may be called 'modern Roman law,' that is to say, those portions of the civil law which, being of a universal character, and applicable to the relations of modern society, have formed the basis of the jurisprudence of many continental nations, and entered so largely into our own.

"The committee are of opinion that this study of the theory of the civil law may be most advantageously combined with the study of jurisprudence, and that the two united will furnish the best means of preparatory legal culture, and the formation of an enlarged and comprehensive legal mind.

"In lecturing on this subject the committee recommend that the lecturer should read with the class, first, the greater part of the institutes, and then portions of the pandects, accompanying that which is read with an exposition of the subject, tracing the rules and principles in the jurisprudence of modern nations, and more especially in that of our own country.

"The committee believe that this plan, if properly carried out, will be of the greatest advantage to students in the commencement of their studies; and that the transition, which they desire should be constantly made, from the principles of the civil law to corresponding portions of English law, and the cases and judg-

ments in the latter, which are most illustrative either of the agreement or differences of the two systems, will effectually tend to ground the students in a right apprehension of the principles of many of the most important portions of English law, as now practically administered. It is scarcely necessary to observe that to students intended for the equity bar, (and which now form a large proportion,) this is the only fitting course of preparatory study.

"The committee recommend that the lecturer should deliver three terminal courses, each consisting of 20 lectures, the first course between the first day of Hilary Term and the end of March; the second between the first day of Easter Term and the 10th of July; and the third between the 26th of October and the 24th of December in every year. This division will give about two lectures to every week, of which they recommend that one should be on jurisprudence and one on the civil law, making it the text for the exposition of English law.

"The committee are aware that to render these lectures attractive, superior qualifications will be required in the lecturer, and that his remuneration from the society should be ample; they think however that as an incentive to the lecturer, part of the emolument should be dependent on the number of students; and they propose, therefore, that the annual sum of 300 guineas should be received by the lecturer from the society, and that he should also receive from every student one guinea for each terminal course of lectures.

"The committee think that, having regard to the obligation which by the rules of the house is now thrown on the students of attending 'readings' (which are merely nominal) and the fines imposed for non-attendance, each student might well be required to attend at least one of the terminal courses previously to being called to the bar; but at present the committee recommend that no direction be given for enforcing attendance until some general system shall have been adopted in connection with the other societies. With respect to the term for which the lecturer should be appointed, the committee desire that there should be a succession of able lecturers on such extensive subjects; but they are at the same time aware that the tenure of office should be sufficiently long to afford an adequate compensation for the labour of composing a well digested course; and they therefore think that the lecturer should be appointed for three years, to be computed from the end of six months from the date of such appointment, which preliminary period of six months is to be allowed for the composition of the lectures, and in respect thereof the extra sum of 100 guineas should be given if the lecturer shall have discharged the duties of his office during the whole period for which he is to be appointed.

"Thus the lecturer will receive one thousand guineas from the society, which, with the annual sums paid by the students, the benefit of publication, and, as the committee trust, the generous feeling of deserving well of the profession, will form a sufficient inducement to men of the highest attainments to seek the

office and to be zealous in the performance of its duties.

"With respect to the qualification of the lecturer, the committee recommend that he should be either a barrister or a doctor of civil law. The mode of the appointment of the lecturer is a matter of some delicacy; and the committee suggest that the bench having received the names and testimonials of the candidates, should adopt some mode of nomination which may prevent all canvassing and personal solicitation.

"The committee propose that the lectures shall be opened to the students of all the societies.

"The committee next request the attention of the bench to the second part of the system of education they recommend to be adopted, and which consists in the institution of an annual examination of students proposed for the bar, previous to their being called. The committee do not propose that such examinations shall be made compulsory, but they think it highly desirable that an opportunity of distinguishing themselves should be afforded to all young men desirous of becoming advantageously known to the profession in a legitimate manner; and they therefore propose that on the occasion of every call to the bar the names of those students who have submitted themselves to examination shall be published by the society with such honourable addition as they shall appear to have deserved: and the committee hope and believe that the attention of the profession will be attracted to these lists, and that many young men will be found desirous of availing themselves of this unexceptionable mode of becoming known and distinguished. The committee propose that the examination shall be conducted by three benchers, assisted by the lecturer; and that it shall consist of questions in jurisprudence, common law, equity, and conveyancing, to each of which questions a numerical value shall be attached by the examining benchers.

"The committee suggest that the lectures should commence in October 1846, unless an able lecturer can be found who is prepared to enter in Easter Term next on the duties of his office; and they also propose that the first examination shall be held in Trinity Term 1847.

"The third recommendation of the committee is necessary, for the completeness of the institutions they desire to see established.

"As an additional inducement to attendance at the lectures, and to exertion at the examination, the committee propose that two exhibitions or prizes of one hundred guineas each should be given by the society to the two students, who having diligently attended at least three terminal courses of lectures, shall have passed the most meritorious examination.

"The committee believe that these exhibitions will not only prove to be a great incentive to attendance at the lectures and at the examination; but that they will also be found of great benefit to many young men of slender means; and the committee trust that the number of these rewards may be hereafter augmented."



**SOLICITORS CANVASSING FOR RAILWAY BUSINESS.**

OUR attention has been called to several instances of objectionable practice by solicitors, who make application and send circulars asking for employment in matters relating to railways. One of these canvassing gentlemen proposes to the owners or occupiers on an intended line, to conduct their cases, and obtain compensation. Another solicitor offers to defend parties who are likely to be involved in litigation, either as shareholders or committee-men. Now, these and such like offers to transact the business of other men's clients, is certainly at variance with professional usage, and however generally respectable these solicitors may be, they should be reminded that such modes of obtaining business have hitherto been deemed disreputable; and we see nothing in the nature of railway business that should exempt practitioners from the rules of the profession, long established, for maintaining fair and honourable practices.

**MEETINGS OF PROFESSIONAL SOCIETIES.****THE MANCHESTER LAW ASSOCIATION.**

THE annual meeting of this society took place on Wednesday, the 7th instant, when the report of the committee was read by Mr. Thomas Taylor, the Honorary Secretary. The following are the most material parts of it:—

The first matter brought under the consideration of your committee was, the Court of Record Bill for this borough. The town-clerk of Manchester, immediately on receiving a draft thereof as prepared by counsel, laid it before your committee, with an intimation that any alterations or suggestions which they might deem necessary to make, would receive from the town council their best attention. Your committee thereupon obtained a copy of the rules and regulations of the Borough Court of Liverpool—a court which has been found to work to the satisfaction of the profession and the public—and proceeded to alter the draft bill submitted to them under the guidance of what they considered so good a precedent; and most of the alterations suggested, although effecting material changes in the proposed measure, your committee have pleasure in stating were approved of on behalf of the council, and embodied in the bill before the same passed into a law.

The bill for effecting alterations in ecclesiastical courts as introduced by Lord Cottenham, received the careful consideration of your committee, and had the measure been pro-

ceeded with, they would have felt it their duty to have opposed to the utmost of their power its passing into a law, unless very considerable modifications had been acceded to.

Lord Campbell's Real Property Registration Bill also received their best consideration, as a measure of the greatest importance; and as it will in all probability be again introduced during the forthcoming session of parliament, your committee take the liberty of calling the attention of their successors in office, to a subject so deeply affecting the interests both of the profession and the public.

The Real Property Bill, No. 1, and the Granting of Leases Bill, were also carefully perused by your committee; but, considering as they did, that the provisions of these bills were not likely to prove injurious to the interests of the profession, they deemed it unnecessary to take any steps respecting them.

Your committee considered it requisite to call the attention of the chancellor of the duchy, the members of the borough, and the town-clerk, to clause 10 of the Small Debts Bill, which empowered the secretary of state to enlarge the jurisdiction of courts for the recovery of small debts, and to point out to them the evil which would arise from the exercise of such a power in aid of courts, constituted as are the Manor and Salford Hundred Courts.

Your committee having been informed that commissioners had been appointed to inquire into the expediency of altering the circuits, considered that a fitting opportunity thus presented itself for renewing their endeavours to obtain an adjournment of the assizes to this town. They accordingly had an interview with the mayor of Manchester on the subject, and prepared and forwarded to the proper quarter a memorial, setting forth their reasons, in favour of the proposed adjournment.

Your committee also caused a petition to be presented to the House of Commons against the chancery compensation fees, praying for an inquiry into the fees imposed upon suitors in pursuance of the powers of the act "for abolishing certain offices in the High Court of Chancery," and into the state of, and charges affecting the several funds of suitors of, the said court. They also prepared and caused to be presented, a petition for the removal of the superior courts of law and equity from Westminster to a more convenient and eligible locality.

Your committee have much pleasure in stating, that on several occasions during the past year they have received communications from the secretary of the Incorporated Law Society, on various subjects affecting the profession, and the fair and liberal practice of its members; and that your committee have, on their part, had occasion to direct the attention of that society to dishonourable conduct on the part of persons practising in this town and neighbourhood. The efforts of a body so respectable and influential as the Incorporated Law Society, in co-operation with our own, are well calculated to promote the high objects

which this association seeks to accomplish; and your committee cannot dismiss this subject, without urging upon their successors in office the importance of a continued cultivation of the good understanding which now so happily exists between the two societies.

One of the most important subjects which has engaged the attention of your committee, has been the settling of a scale of charges to be made by auctioneers in ordinary cases for the sale of estates. Your committee were applied to by the Manchester Association of Auctioneers, to grant them an interview on this subject, which was at once acceded to. At a meeting which in consequence took place, the chairman of that body urged upon your committee the importance of having (in ordinary cases) a fixed scale of charges, and laid one before them of which they had themselves unanimously approved. Your committee entered into the consideration of the subject with every desire to act with such liberality towards the auctioneers as their duty to the profession and the public would permit; and they eventually agreed upon a scale, which, though differing in many important particulars from the one submitted for their approval, received without hesitation the concurrence of the society of auctioneers. Although your committee could not arrogate to themselves any power to compel the adoption of this arrangement by the profession and the public, they would, nevertheless, strongly recommend that the scale as now settled shall, when practicable, be adhered to.

Your committee are gratified to inform you, that the intention announced in the report of last year, of delivering, during the winter, a course of lectures on different branches of the law, for the benefit especially of the articulated clerks of members, so entirely answered the expectations of the promoters, as to have determined your committee upon again procuring the assistance of several members to grant similar advantages during the present winter; and they have pleasure in stating, that this assistance has been kindly promised, and that a second course of gratuitous lectures will forthwith be delivered.

Your committee have also to announce the receipt of an intimation that the articulated clerks of this town had formed themselves into a Law Students' Society, and that the use of the large room in the building in Norfolk Street has been granted to them for their evening meetings; and as a further encouragement to the new society, your committee have approved of prizes being offered for the best essays on legal subjects to be proposed by your committee, and to effect this object ample donations have already been received.

Very many points of practice have been submitted to your committee for decision during the past year, and it has been their endeavour to decide them in accordance with what they deem to be fair and liberal practice on the part of members of the profession towards each other. Your committee have great pleasure in stating, that the decision of the various com-

mittees of this association, on cases submitted to them, have been frequently quoted with approbation, and have, in every instance within their knowledge, been acted upon; and as several points of practice submitted during a period of nearly eight years cannot fail of proving interesting to the members generally, they have determined upon selecting the most important cases, and adding them, together with the decisions, as an appendix to this report.\*

This report was unanimously adopted. Mr. John Bagshaw, of the firm of Messrs. Bagshaw and Stevenson, was elected president; and Mr. Brown, of Oldham, and Mr. Samuel Fletcher, of Manchester, vice-presidents.

#### THE PROVINCIAL LAW SOCIETIES' ASSOCIATION.

We stated the annual report of this society last week, and it may be proper to add, that the association consists of the following local societies:—

Beverley and East Riding,  
Birmingham,  
Denbighshire and Flintshire.  
East Kent,  
Gloucestershire,  
Kent,  
Leeds,  
Lancaster,  
Liverpool,  
Lincolnshire,  
Hull,  
Manchester,  
Oxfordshire,  
Yorkshire.

Mr. Ambrose Lace, of Liverpool, was elected president; Mr. Bromehead, of Lincoln, and Mr. George Horley, of Manchester, vice-presidents; and Mr. Thomas Taylor, secretary.

#### THE OPPOSITE SIDES OF WESTMINSTER HALL.

THE following extract from Lord Campbell's work, the "Lives of the Chancellors," shows why the opposite sides of Westminster Hall meant (what they no longer do) the equitable and common law jurisdictions. The allusion to the arbitrary system of purveyance and pre-emption, and render in kind, discloses a state of things founded in necessity and good sense at the period in question, though very different from the modern arrangements of Windsor Palace. His lordship, discoursing upon the legal changes established in the long reign of Edward 3, observes, that

\* These we shall soon be enabled to lay before our readers.

"There was introduced about this time a great improvement in the administration of justice, by rendering the Court of Chancery stationary at Westminster. The ancient kings of England were constantly migrating;—one principal reason for which was, that the same part of the country, even with the aid of purveyance and pre-emption, could not long support the court and all the royal retainers,—and the render in kind due to the King could be best consumed on the spot. Therefore, if he kept Christmas at Westminster, he would keep Easter at Winchester, and Pentecost at Gloucester,—visiting his many palaces and manors in rotation. The Aula Regia, and afterwards the courts into which it was partitioned, were ambulatory along with him, to the great vexation of the suitors. This grievance was partly corrected by *Magna Charta*, which enacted that the Court of Common Pleas should be held in "a certain place,"—a corner of Westminster Hall being fixed upon for that purpose. In point of law, the Court of King's Bench and the Court of Chancery may still be held in any county of England, 'whosoever in England the King or the Chancellor may be.' Down to the commencement of the reign of Edward 3, the King's Bench and the Chancery actually had continually followed the King's person, the Chancellor and his officers being entitled to part of the purveyance made for the royal household. By the 28th Edw. 1, c. 5, the Lord Chancellor and the justices of the King's Bench were ordered to follow the King, so that he might have at all times near him sages of the law able to order all matters that should come to the court. But the two courts were now, (temp. Edw. 3,) by the King's command, fixed in the places where, unless on a few extraordinary occasions, they continued to be held down to our own times, at the upper end of Westminster Hall, the King's Bench on the left hand, and the Chancery on the right, both remaining open to the hall, and a bar being erected to keep off the multitude from pressing on the judges.

"The Chancellor, on account of his superior dignity, had placed for him a great marble table, to which there was an ascent of five or six steps, with a marble chair by the side of it. On this table writs and letters patent were sealed in the presence of the Chancellor, sitting in the marble chair. Here he received and examined the petitions addressed to him. And on the appointment of a new Chancellor, he was inaugurated by being placed in this chair.

"The marble chair and table are said to have been displaced when the court was covered in from the hall. But till the courts were finally removed out of Westminster Hall, there were easy means of communication between the Chancery and the King's Bench, which enabled Sir Thomas More to ask his father's\*

bleasing in the one court, before he took his seat in the other; and I myself remember, when a student of law, that if the Chancellor rose while the King's Bench was sitting, a curtain was drawn, and the judges saluted him."—*Lord Campbell's "Lives of the Chancellors,"* vol. 1, p. 214.

## SELECTIONS FROM CORRESPONDENCE.

### LAND TAX.—MANORIAL RENTS.

To the Editor of the Legal Observer.

SIR,—I shall be glad if some of your correspondents will inform me on the following points regarding the allowance of land tax out of manorial quit or free rents, under the clauses in the Land Tax Act, 38 Geo. 3.

Must the lord allow 4s. in the pound, where two or more rents in the same manor for different parcels or estates, amounting collectively to 20s., though *each* under that sum?

And must he allow the tenant to unite the quit-rent of two adjoining manors, though the property of the same lord, for that purpose?

The tenant paying the rent, deducts 4s. in the pound from the amount, as for land tax; on the ground that his estate yields *so much less* on account of these rents, whereas, in fact, for that estate he is not charged to the land tax at the rate of 1s. 3d. for its produce; and therefore, ought not to deduct in a greater proportion than he is charged with. How is this to be adjusted?

AN ORIGINAL SUBSCRIBER.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

#### FEES OF BARRISTERS' CLERKS.

*The court has no jurisdiction over a barrister's clerk who has kept a fee, out of money belonging to a solicitor, of larger amount than allowed; but the fees of such clerks*

years of age, but hale in body and sound in understanding, and continuing vigorously to perform the duties of senior puisne judge of his court. Every day, it appears, during term time, his celebrated son, the Chancellor, before beginning business in his own court, went into the Court of King's Bench, and, kneeling before his father, asked and received his blessing. However amiable the motives of this daily ceremony, it would in modern times be deemed inconsistent with judicial decorum.

\* The father of Sir Thomas More was at this time a judge of the King's Bench, near 90

*can only be considered as gratuities, which the solicitor or party consulting the master may pay or not at his own option. There is no legal demand; but clerks' fees are by custom usually paid, and are allowed, on taxation, to the amount mentioned in the scale approved by the Lord Chancellor and the other judges [on the 5th Nov. 1840.]\**

THE Master of the Rolls said, — In this petition the petitioner, Mr. Cotton, who is a solicitor, complains that at a conference with a learned counsel, and being willing to pay the usual customary fee of five shillings to the clerk of that counsel as his fee upon the conference, the clerk, having a sum of money belonging to Mr. Cotton in his hands, claimed seven shillings and sixpence as his fee, and notwithstanding continued remonstrance, retained that sum of seven shillings and sixpence, without the consent and against the will of Mr. Cotton, who thereupon by this petition asks me to make such order as in the case I may think fit and proper.

Upon the hearing of this petition, it was alleged by the petitioner that a counsel's clerk has no legal right to demand any fee or reward whatever, and that whatever is given by a solicitor or any other party consulting the employer of the clerk, is given to him only by way of gratuity, and that by the custom of the profession only, and not from any legal claim that the clerk has, is that gratuity given, and that that professional custom only sanctions the payment of five shillings as the gratuity to the clerk upon a conference with his master, and that upon the taxation of a solicitor's bill of costs no greater sum would be allowed, if objected to, by the taxing master.

On the other hand, the respondent, John Lewis, insists that he had a right, as a fee, to the sum of seven shillings and sixpence, and that this court had no jurisdiction over him in respect of any act done by him in his character of a counsel's clerk, and that except in the consideration of the taxation of a bill of costs, this court had no jurisdiction, and can therefore make no order in this matter; and he further goes on to state that for the purpose of peace and that no further proceedings in the matter should take place, he had offered to return the two shillings and sixpence to the petitioner, Mr. Cotton, who refused to accept the same, and for these reasons he, the respondent, desires to have the petition dismissed with costs.

I have been given to understand that claims at different times have been made by counsel's clerks upon solicitors or parties themselves who have had occasion to consult their masters, which claims, from their having been resisted, have had the effect of injuring the interests of the parties, by causing a great inconvenience to arise in the intercourse between solicitors and counsel, which ought not

to exist, and this point having been brought under my consideration by the present petition, it occurred to me that it might afford an opportunity to me, if possible, as a thing much to be desired, of putting an end to all controversy upon the subject by having an uniform table of fees; and with a view to that object, I deferred giving my judgment on the hearing of the petition, and meant to have consulted the judges upon the matter, but upon further consideration of the matter, however, I was of opinion that the facts of this case do not of themselves afford a sufficient ground for that course; and as it now appears to me that I have no jurisdiction over either the person or the matter complained of by this petition, I think it right to dispose of the question without any further delay. I having no jurisdiction in the matter, it follows therefore, of necessity, that I must dismiss the petition; but, for the reasons that I am now about going to state, I, upon so doing, shall dismiss it without costs.

Neither I nor any other person know any legal ground upon which any counsel's clerk can base his right to demand any fixed sum as his fee from any solicitor, attorney, or party who may have occasion for consulting the employer of that clerk. The custom of the profession has been certainly to give a certain sum to clerks when consulting their employers, but it has not been from any recognised legal claim to a fee, but as a return for their civility, and perhaps from an apprehension that the cheerful service which is due from the clerk to his master would not be so well or so zealously applied to the business of the party consulting, if nothing was given to the clerk; and that is a reason, perhaps, why the sums called fees are paid to them.

I am not aware that the clerks' fees were so sanctioned as to be the subject of any regulation whatever, until the judges at common law, in the year 1834, gave a direction to the taxing masters that the fees to clerks should not exceed the sums therein stated. These fees are set forth in the recent edition of the General Rules and Regulations of the Common Law Courts. Some time after that, the Law Society presented a memorial to the Lord Chancellor and the judge of this court, and that memorial sets forth that the sums therein mentioned would be allowed as gratuities to the clerks of counsel, and it was prayed that such sums might be sanctioned. Amongst the fees was one not mentioned in the direction of the judges to the taxing masters of the common law courts, and which was, that a sum of five shillings should be given to the clerks as a fee upon a conference; this being, as I have said, a fee not mentioned in the direction of the judges, which related only to fees between party and party.

On the consideration of that memorial, it appeared scarcely necessary to make an order upon a subject that was so entirely under the control of the solicitors or the parties for whom they act. The clerk's fees, as I thought

\* See Orders in Chancery, by G. W. Sanders, Esq., vol. 1, p. 871.

than and as I still think, can only be considered as gratuities which the solicitor or party consulting the master may pay or not at his own option, and although the custom of the profession may be universal in paying them, yet I was of opinion there was no legal demand, and that the sum did not require any limitation, especially as it appeared to me the counsel themselves had it always in their power to prevent disputes. The common law judges had thought it right to interfere by their notification to the masters, to which I have referred, and upon the representation that certain grievances did exist, an answer to the memorial, which was in the form rather of an opinion upon a memorial, was signed, and has, as I have reason to know, been very commonly acted upon—not always, indeed, for the respondent Lewis has produced several instances to the contrary, and it is very evident that different persons in the consideration of what may be a proper gratuity to be allowed, may feel and act very differently according to their different notions of liberality, but I believe, however, that the sum allowed on the taxation of a bill of costs has been considered as affording the general rule for the amount to be paid for such clerk's fees. The clerk's fees, although not legally demandable, have thus by custom been usually paid, and in the taxation of a bill of costs, they were, to the amount mentioned, considered as expenses fairly or not improperly incurred in the transaction of the business of the party for whom the solicitor acted. In the argument on the hearing of the petition, this memorial was inaccurately called an order. It was not contended in that memorial that the clerks had any right to claim the sums therein mentioned, and considering as I do, that the respondent, John Lewis, had not any right to anything except what was offered to him by the petitioner of his own free will, I think that he has erred in demanding or retaining what was not voluntarily given to him, especially considering that the amount was a sum of money which he ought to have known would not be allowed upon taxation of the solicitor's bill, if opposed, and which the party employing such solicitor might have to pay out of his own pocket; and lastly, considering the mode,—which I must call the very improper mode,—in which he detained the sum that he claims as his fee, although repeatedly remonstrated with by Mr. Cotton, I think the error committed was very great and very much to be regretted. It does not appear to me that his mere offer to return the money was to be considered as any reparation of that error, for although offering to return the money he does not abandon his right to claim it, and although I have no jurisdiction in the matter, yet I think the petitioner, Mr. Cotton, has great reason to complain of the respondent, and he comes here under circumstances which, notwithstanding the dismissal of his petition, induce me to think that he ought not to be charged with any costs.

I believe counsels' clerks to be generally a highly honest and industrious body of men.—

I consider them as a very meritorious body of men, and to whom great respect is due, and as a body, against whom nothing can be said. Yet, the circumstances of this case appear to me to be such as to make it proper for me to state, that in my opinion they best consult their own respectability and profit, and the highest interests of their employers, which they are bound to sustain, when they abstain from making claims which cannot be legally substantiated or be legally upheld.

The condition in life of the clerks,—their means of livelihood,—does not entirely depend upon what they receive from their employers, but depends mainly upon the fees they are allowed to receive, according to the general custom of the profession; and under such circumstances it is reasonable for the clerks to expect to receive the customary fee, but that fee is in its legal character a mere gratuity, and for which there is no legal demand. The sum which may be allowed upon the taxation of costs does not limit the sum which may be spontaneously bestowed by any solicitor upon a clerk as a fee, but it is the limit of the sum to be allowed to the solicitor by the master if it is objected to, and if he gives more, if objected to, it must come from his own pocket, and in ordinary cases it does seem to me to be very imprudent and improper in the counsels' clerks to indulge a hope, that they may or ought to receive a greater sum than the solicitor would, upon taxation and objection made thereto, be allowed to charge his client with; and upon consideration of the whole matter I have come to the opinion that this petition must be dismissed, but without costs.

Petition dismissed without costs.

*Ex re Cotton.* Jan. 15, 1846.<sup>b</sup>

#### MORTGAGOR AND MORTGAGEE. — PRODUCTION OF DOCUMENTS.

*In a suit against a mortgagor, vouchers relating to his security will be ordered to be produced, although it may appear by his answer that they do not form part of the plaintiff's title, provided they may tend to make out and support the case stated in the bill.*

Mr. Turner and Mr. Anderson moved for the production of the documents admitted by the answers of the defendants to be in their possession. The defendants objected to produce certain bills of exchange and promissory notes, in respect of which their mortgage security was given; but although they stated that those vouchers did not relate to the title of the plaintiffs, they did not deny that the truth of the matters in the bill might appear by the production of them.

Mr. Willcock, for the defendants, said, that the documents which they objected to produce were the bills and notes, and also certain ac-

<sup>b</sup> This report has been taken from the shorthand writer's notes.

counts with regard to the former of which they were as much the defendant's security as the mortgage deed, and with regard to the latter, only a small portion related to the matters in question in this suit.

The Master of the Rolls said, that all the documents must be produced, except the mortgage deed and the draughts of it; but the defendant might be at liberty to seal up such parts of the accounts as did not relate to the matters in question in the cause.

*Gibson v. Hewett*, January 12, 1846.

### Vice-Chancellor of England.

#### EXTENDING TRIAL.—RECEIVER.

*On a motion to extend trial of an action, upon the ground that one of the defendants, who is out of the jurisdiction, has not put in his answer, it is not a valid objection, that the action is really the action of a receiver brought under the sanction of the master.*

THIS was a motion to extend an injunction to stay trial of an action brought by J. B. Smith against Messrs. Hoare & Co., in the name of Mr. Fulke Greville, to recover a sum of money, part of the assets of the late Lady Mansfield in the hands of Messrs. Hoare, upon which they claimed a lien in respect of advances made by them, during Lady Mansfield's life, to Mr. Fulke Greville, to whom Lady Mansfield bequeathed the bulk of her property. Mr. Fulke Greville was out of the jurisdiction, and the motion was, to extend the injunction till the coming in of his answer. Sir B. Smith claimed to be assignee from Mr. F. Greville of all his interest in Lady Mansfield's estate. It appeared by Sir B. Smith's answer, that he had filed a bill against Mr. Fulke Greville for the administration of Lady Mansfield's estate, in which he had obtained a decree on the 15th of June last, and a receiver. That application had been then made to Messrs. Hoare to pay this money into court in that suit, and that upon their refusal to do so, the master to whom the cause stood referred authorised the receiver to bring an action to recover the money. It was said that this was the action of the receiver, or in fact of the court, with which the court would not interfere, and that Messrs. Hoare might come in and establish their claim before the master.

*Mr. Bethell and Mr. Hoare for the motion.*

*Mr. Malins and Mr. Baley, contra*, relied upon this being the action of the receiver, and also upon the circumstance that the action stood for trial in three days. On this point they cited *Stokes v. Wilson*, 12 Sim. 91; *Thorpe v. Hughes*, 3 M. & C. 742; and *Field v. Beaumont*, 3 Mad. 102.

The Vice-Chancellor said, that if the court would bring an action against a party who was out of the jurisdiction, it must conform to its own rules. Therefore the injunction must be extended.

*Hoare v. Greville*, Dec. 17, 1845.

#### BILL, SERVICE OF.—CONSTRUCTION OF 28TH ORDER OF MAY, 1845.

*Where an order has been obtained, ex parte, under the 28th Order of May, 1845, to extend the time for service of a copy of a bill, it is not necessary to serve a copy of such order with the copy bill.*

THE time having expired for service of the bill in this case, under Order 16, Art. 2, of May 1845, an order was obtained, *ex parte*, under the 28th of the same orders, for leave to effect such service, notwithstanding the time had expired, and a question having been raised at the registrars' office, whether it was necessary to serve a copy of such order with the copy bill.

Mr. Glasse directed the attention of his Honour, the Vice-Chancellor, to the subject, and after having taken time to communicate with the other judges of the court,

The Vice-Chancellor this morning said, that the court was unwilling to impose any duty under the new orders which was not provided for in express terms, and that the service of such an order was unnecessary.

*Fenton v. Clayton*. January 14, 1845.

### Vice-Chancellor Bigham.

#### PRACTICE.—TAXING BILL PRO CONFESSO.—77TH AND 78TH ORDERS OF MAY, 1845.

*Unless the evidence is distinct and positive, the court will decline making an order to take the bill pro confesso upon motion, but will fix a day for the hearing, and then hear cause shown.*

Mr. J. H. Palmer moved, upon affidavits, that the bill might be taken *pro confesso*, under the 78th Order of May last. The affidavit stated, that the residence of the defendant had not been ascertained, after repeated inquiries for his residence; that it was not, and had not been known even to the defendant's solicitor since the suit had been instituted, although he, (the defendant), had frequently called at the office of the latter gentleman. It appeared that there had been considerable difficulty in the service of the subpoena, which ultimately had only been effected by the clerk of the solicitor, who watched the defendant at a theatre which he was known to visit. It appeared also, that the sheriff's officer had been unsuccessful in discovering the defendant or his residence, for the purpose of executing an attachment for not putting in his answer. The bill was filed on the 7th of January. The defendant appeared to the bill by his solicitor on the 31st. The attachment for want of answer had issued on the 10th of September. The plaintiff had been served with notice of this motion on the 29th of November, but no one appeared upon it. The case of *Harrison v. Stewardson*, (2 Hare, 533,) and the form of the order in that case was referred to, but it was submitted that delay

would be caused by following it in the present instance.

Sir *James Wigram*, V. C., thought that the evidence was not so distinct and positive as to justify the court in making an absolute order upon motion, but, following *Harrison v. Stewardson*, fixed the first day of next term for the hearing, when cause might be shown.

*Courage v. Wardell*. Dec. 15, 1845.

### Queen's Bench.

(Before the Four Judges.)

#### FRIENDLY SOCIETIES.—MONEY HAD AND RECEIVED.

*The statute 59 Geo. 3, c. 128, s. 1, enacts, "that no society hereafter to be formed shall be entitled to the benefits or subject to the provisions of the said acts, unless such society shall have been constituted under the authority and according to the provisions of this act." Held, that a society which had been formed for a considerable time before the act passed, but the rules and regulations of which society had not been enrolled by the quarter sessions, pursuant to the directions of the statute, did not come within the protection of that statute.*

THIS was an action for money had and received. Plea, never indebted. The plaintiff was the surviving trustee of a friendly society, (but did not sue in that character,) and the defendants were stewards of the same society. The members of the society to which both the plaintiff and defendants belonged, had come to the resolution of dissolving it, and the remaining funds of the society were divided and paid by the defendants to each of the members, which was alleged to have been done with the privity and consent of the plaintiff. The action was brought to recover the money so paid by the defendants, which the plaintiff alleged had been illegally paid. The society had been formed for a considerable time previous to the passing of the 59 Geo. 3, c. 128, but the rules and regulations of the society had been confirmed and allowed by the quarter sessions, pursuant to the directions of that statute. One rule of the society was, that the society should not be dissolved if more than six dissented. It was contended at the trial, that the plaintiff ought to be nonsuited, because the action was improperly brought. The learned judge left the case to the jury, who found, specially, that the plaintiff assented to the division of the funds, and that not so many as six members dissented. On the finding of these facts, the learned judge nonsuited the plaintiff, reserving leave to move to enter a verdict for the plaintiff. A rule had also been obtained to enter a verdict for the defendants.

Mr. *Crowder* and Mr. *Taprell*, for the defendants.

The plaintiff is not entitled to have the verdict entered for him. In the first place he

does not sue in the proper character, for he ought to sue under the 59 Geo. 3, c. 128, as surviving trustee. In the next the jurors have found that the money was paid with his consent if not by his direction, and that fact disables him from maintaining an action of this kind, which is an equitable action.

Mr. Serjeant *Kinglake* and Mr. *Phian*, for the plaintiff.

This action is maintainable in its present form. The defendants paid the money illegally, according to the 59 Geo. 3, c. 128, and other statutes in force with reference to this subject. [*Patteson, J.* The first section of the 59 Geo. 3, c. 128, enacts, "that no society hereafter to be formed in England or Wales or the members thereof shall be entitled to the benefits, or subject to the provisions of the said acts, unless such society shall have been constituted under the authority and according to the provisions of this act." This is not a society within the meaning of this section, because the society was formed before the act passed. If the plaintiff seeks the protection of the statute he must bring himself within its enactments.]

Mr. Serjeant *Kinglake* then contended, that on the facts found by the jury the defendants were not entitled to have the verdict entered for them. The fact that the money was paid with the consent of the plaintiff, does not justify the defendant in paying it. If a verdict is entered for the plaintiff, it will be a means of preventing further litigation on the subject.

Lord *Denman*, C. J. If any one fact was found by the jury which we saw clearly entitled the defendants to a verdict, we should be disposed to enter it accordingly, but we do not think, under the circumstances of this case, that we can do so. On the other hand, we think that the plaintiff is not entitled to a verdict against them, considering what has been his conduct in the case. Things had better remain as they are.

*Patteson* and *Coleridge*, J's, concurred.

Both rules discharged.

*Parnell v. Smith and others*. Q. B., Hilary Term, 1846.

### Nisi Prius.

#### ATTORNEY AND CLIENT—SIGNED BILL.

*In an action on an attorney and solicitor's bill, one of the items of which is a gross sum paid to a proctor by the plaintiff, for and at the request of the defendant, in respect of business done in a suit in the Ecclesiastical Court, to which the defendant was a party. Semble, it is not necessary in the signed bill delivered one month before action, to specify the particular items composing such gross sum.*

THIS was an action for debt on an attorney and solicitor's bill, amounting to 183*l.* 1*s.* 4*d.* Pleas 1, never indebted: 2, as to 141*l.* 14*s.* Parcel, &c. no delivery of a signed bill one calendar month before action brought. At the foot of the account were the words "This is

my bill," subscribed with the plaintiff's name. The charges in the bill were, amongst other things, for attendance, &c. in getting up evidence for the purpose of a suit in the Ecclesiastical Court, to which the defendant was a party. The above item of 141*l.* 14*s.* was the amount of the proctor's bill in the proceedings in the Ecclesiastical Court, paid by the plaintiff for and at the request of the defendant, and the particular items was in these terms:—"Paid Mr. Rotheram his bill, 141*l.* 14*s.*" At the conclusion of the plaintiff's case,

*Montague Chambers* objected with respect to this portion of the demand, that no sufficient signed bill had been delivered before the commencement of the suit, contending, that the items of which Mr. Rotheram's bill was composed ought to have been set forth, and cited *Drew v. Clifford*, 2 C. & P. 69, where it was held, in an action on an attorney's bill to be insufficient to charge the costs of an action brought for the defendant by the plaintiff as attorney in one sum in the lump, although the costs in that action had been taxed at that sum as between party and party.

*Williams, J.*, inclined to the opinion, that it was unnecessary to specify such item, but consented to reserve the point should it become necessary.

*Humfrey and Gunning*, for plaintiff.

*M. Chambers and Greenwood*, for the defendant.

*Taylor v. Tennant*. Sittings at *nisi prius*, Q. B., Hilary Term, Jan. 19, 1846.

### Queen's Bench Practice Court.

#### OPENING RULE UPON FRESH AFFIDAVITS.—WHEN NOT ALLOWED.

*After a rule has been argued and disposed of, it cannot be opened upon fresh affidavits denying the facts sworn to by the successful party, and by which the decision of the court was governed.*

In the course of last Michaelmas Term a rule *nisi* for judgment as in case of a nonsuit, in this cause, was discharged, upon an affidavit of the lessor of the plaintiff, stating that in August last, during an interview between him and the defendant upon the subject of the action, it was, agreed, upon the defendant's proposal that all proceedings should be stayed, on each party paying his own costs; and that the action was then settled accordingly.

*Udall* now applied for leave to open the rule upon affidavits, positively denying that any such agreement as that sworn to by the lessor of the plaintiff had ever been entered into by the defendant or his attorney, or that there had been any settlement of the action. It was further alleged, that the lessor of the plaintiff himself, since last term, had admitted, that no such settlement had taken place. The learned counsel submitted, that the affidavits showed that the rule had been obtained by fraud, and

prayed that the court would allow it to be reheard.

*Williams, J.* I cannot open the rule upon such affidavits.

Application refused.

*Doe dem. Kell v. Brown*. Hilary Term, Jan. 15, 1846.

#### EJECTMENT.—SERVICE OF DECLARATION BY POST.—WHEN SUFFICIENT.

*A copy declaration and notice in ejectment was sent to a tenant by post, accompanied by a letter explaining the meaning thereof: this, coupled with a subsequent acknowledgment by the tenant, that he received the copy declaration, &c., before the first day of term, is sufficient for a rule for judgment against the casual ejector, absolute in the first instance.*

*Hugh Hill* moved for judgment against the casual ejector. There were five tenants in possession, four of whom had been served with the declaration and notice in the usual manner. As to the fifth, one Thomas Tapling, the affidavit of service stated, that on the 3rd of January, 1846, the attorney for the lessors of the plaintiff sent to him a copy of the declaration and notice by post, directed to him at the "Port Eglintoun Spinning Company's Works, Glasgow," where he then was; that the declaration and notice were accompanied by a letter of the same date from the said attorney, explaining the meaning thereof, and requesting an acknowledgment by post of their having been received; that on the 5th of January, Tapling wrote and sent to the attorney a letter, dated on that day, acknowledging the receipt of the declaration and notice; and that on January 12th, (Tapling having in the meantime arrived in London,) the deponent saw him sign the following memorandum upon the same copy declaration which had been sent to him at Glasgow.

"January 5, 1846.

"I acknowledge that I received the above copy declaration in ejectment.

"THOMAS TAPLING."

The learned counsel submitted that this was sufficient for a rule absolute.

*Williams, J.* Explanation of what Tapling meant does not seem to be necessary; therefore you may take a rule.

Rule absolute.

*Doe ex dem. the Mayor, Commonalty, and Citizens of London v. Roe*. Hilary Term, Jan. 15, 1846.

### Exchequer.

#### ARBITRATORS.—CERTIFICATE.—SPECIAL JURY.—COSTS.

*A cause was referred at nisi prius, and the submission contained a clause giving the arbitrator the same power to certify as a judge at nisi prius; the venue had been ori-*



ginally laid in London, and a special jury had been summoned from that county, but the cause not coming on for trial at the sitting in Middlesex, the parties agreed to change the venue to London, the costs to be costs in the cause. The arbitrator duly made his award in favour of the defendant, and in the following term certified for a special jury. Held, that the certificate was of no effect, but that the defendant was entitled to the costs of the London special jury, as costs occasioned by the change of venue.

A CAUSE came on for trial at *nisi prius*, when a verdict was taken for the plaintiff, subject to a reference. The submission contained a clause, giving the arbitrator the same power to certify as a judge at *nisi prius*. The time limited for making the award expired on the 1st day of Michaelmas Term, 1845, and in the month of August previously, the arbitrator duly made his award, and directed a verdict to be entered for the defendant. The venue had been originally laid in Middlesex, and a special jury of that county had been summoned to try the cause, but the press of business having prevented it from coming on at the sittings, the parties, in order to expedite the trial, agreed, that the venue should be changed from Middlesex to London, and that the costs occasioned by such arrangement should be costs in the cause, and to abide the event. After the first day of Michaelmas Term the arbitrator granted a certificate, that the case was a proper one to be tried by a special jury for taxation, the master disallowed the costs of the special jury, both in Middlesex and London, on the ground, 1st, that the arbitrator had not given the certificate immediately after the verdict, as required by the 6 Geo. 4, c. 50, s. 34; and 2ndly, that the arbitrator's authority had expired at the time he granted the certificate.

Webster moved to review the master's taxation. As to the first objection, the authorities establish, that the word "immediately" is to be construed as meaning within a reasonable time. *Christie v. Richardson*, 10 M. & W. 688; *Thompson v. Gibson*, 8 M. & W. 281; *Page v. Pearce*, 8 M. & W. 677. Those cases have overruled *Waggett v. Shaw*, 3 Camp. 316, in which Lord Ellenborough, upon a similar clause decided, that a judge could not certify for the costs of a special jury the day after the trial. In the present case, the certificate had been granted within a reasonable time, for the defendant could not have applied for it when the verdict was taken for the plaintiff at *nisi prius*, and the award was not delivered to the parties until the month of August, consequently the defendant had no power over the record until after the four first days of the ensuing term. With respect to the second objection, the cases only show that an arbitrator cannot alter his award after the time limited for making it has expired. He may, however, do any act for the purpose of giving effect to his intentions.

Pollock, C. B. The parties have neglected

to call the arbitrator's attention to the clause relating to the certificate until after his power had expired. If he could certify at that time, he might do so now, or at any future period.

Parke, B. It was surely meant that the arbitrator should make his award once for all. He ought to have included the certificate in his award.

Webster then argued, that under the terms of the agreement made upon the change of the venue, the defendant was entitled to the costs of the special jury in London.

Williams showed cause in the first instance. The agreement was, that all the costs occasioned by the change of venue should be costs in the cause, but that will depend upon whether the certificate is valid. Suppose a cause had been made a remanet by consent, the costs of the cause to abide the event, the successful party would not be entitled to the costs of a special jury, unless the judge certified.

Pollock, C. B. The agreement is, that all the extra costs shall abide the event of the cause, not those alone which depend on the certificate of the judge. The master should consider what would have been the costs, if the cause had been tried in Middlesex, and then calculate the gross amount of the costs actually incurred in London and Middlesex, and deducting the one from the other, the balance would be the costs to which the defendant is entitled.

Parke, B. The meaning of the agreement is, that all the costs occasioned by the change of venue—both those of the special jury and others—should abide one event, which is to determine both. But the argument on behalf of the plaintiff amounts to this, that all the costs except those of the special jury, are to abide the event of the cause, and that the costs of the special jury are to abide the event of the certificate. If the parties meant that, they should have so specified it, but they have not done so.

Platt, B. concurred.

Rule absolute.

Geeve v. Gorton. Hilary Term, 20th Jan. 1846.

#### Court of Bankruptcy.

#### PETITION UNDER 7 & 8 VICT. c. 96.

*Circumstances in which a petition under the 7 & 8 Vict. c. 96, is deemed imperfect,*

JOHN SHETLER, who was described as "late of the Norfolk Lodge Public House, Hayland, in the county of Hants, Victualler," petitioned this court for protection from process, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96; and came up for hearing upon such petition, before Mr. Commissioner Evans, for the first time, on Wednesday the 29th Oct. last.

The 2nd sect. of the 7 & 8 Vict. c. 96, enacts, "That every petition for protection from process presented after the commencement of this act, shall be in the form specified in the schedule annexed, and such petition and the schedule required to be annexed, shall be verified by an affidavit of the petitioner in the form specified in the schedule annexed, and if such petition and affidavit shall not be in the form herein prescribed, such petition shall be dismissed."

The form of the petition annexed to the act contains the following statement:—"That your petitioner is desirous that his estate should be administered under the protection and direction of this honourable court, and that he verily believes such estate is of the value of £ at the least, unincumbered, and beyond the value of his wearing apparel and other matter, which your petitioner is authorised to except by this act, and that the same is available for the benefit of his creditors."

The petitioner in this case had literally complied with the act of parliament, but had neglected to fill up the blank after £, in the sentence above cited, and this omission was pointed out by counsel, on behalf of an opposing creditor, and insisted on as a fatal objection. It was urged on the other side, that the petitioner really had no estate, and could not with truth have inserted any sum after the £.

The commissioner was clearly of opinion, that the objection taken was fatal. If the petitioner had no estate, he should have inserted the word "nothing," or some synonymous word or words in the space left for that purpose. By leaving a blank the petitioner avoided swearing, whether he had or had not any estate, and if it were afterwards discovered that he had some estate, he could not be convicted of perjury. The petition must therefore be dismissed.

John Shetler filed a second petition, upon which he again came up for hearing, before Mr. Commissioner Evans, on the 25th Nov.

The form of the petition given by the act directs, that the petitioner shall state—"That your petitioner is not a trader within the meaning of the statutes now in force relating to bankrupts," or if a trader, strike out the word "not," and after the word "bankrupts," add the words, "but owing debts amounting in the whole to less than 300*l*." The petitioner in this case had added the words "but owing debts amounting in the whole to less than 300*l*," but had not complied with the directions in the margin of the petition, by striking out the word "not." The petition therefore ran "that your petitioner is not a trader," &c.

The commissioner's attention having been called by counsel for an opposing creditor to this part of the petition, it was submitted that the petition must be dismissed, as the petitioner upon his own showing was a victualler, and therefore a trader within the meaning of the 6 Geo. 4, c. 16, s. 2, whilst it appeared on the face of the petition, that the petitioner was not

a trader. On the other side it was urged, that omitting to strike out the word "not," was a mere inadvertence, and that the commissioner might now allow the petition to be amended in this respect.

The commissioner thought he had no power to order the petition to be amended, although he had power to allow the schedule to be amended. The petition as it had been filed by the petitioner was not true, and must therefore be dismissed.

The insolvent filed a third petition, which came on for hearing before Mr. Commissioner Evans on the 17th of December last.

It now appeared on the face of the petitioner's schedule, that he had borrowed the sum of 11*l*. 5*s*. 8*d*. in the month of September, from his daughter, for the purpose of paying assessed taxes and parochial taxes, for both of which the collector had levied, and at the time of such loan he had expressly agreed to repay the amount to his daughter, out of a sum he was to receive from his landlord for fixtures, at Michaelmas. It also appeared, that the petitioner, in pursuance of such agreement, had repaid his daughter the sum of 11*l*. 5*s*. 8*d*. so borrowed on the 29th Sept. last. The present petition was filed on 27th Nov.

Counsel on behalf of the opposing creditor now called attention to that part of the petition in which the petitioner stated, that he had "not parted with or charged any of his property except for the necessary support of himself and his family, and the necessary expenses (not exceeding 7*l*.) of this his petition, or in the ordinary course of trade, at any time within three months of the date of filing this his petition, or at any time with a view to this petition;" and contended, that the payment of a debt to the petitioner's daughter, within three months, was a parting with his property, not for the support of his family, or in the ordinary course of trade, and that on this ground the petition ought to be dismissed.

The commissioner was of opinion, that if the petitioner had paid the tax collector directly himself, such a payment would fairly fall within the description of a payment for the necessary support of himself and his family. The case was made somewhat different, however, by the fact that the daughter had advanced the money to pay the taxes, and the petitioner afterwards paid the daughter. He entertained so much doubt on the point, that he should consult his brother commissioners, and give his judgment hereafter.

On a subsequent day the learned commissioner stated, that he had consulted his brother commissioners on the point reserved, and was now of opinion, that the payment to the daughter was a parting with property within the meaning of the act.

The petition was therefore ordered to be dismissed.

*In the matter of John Shetler.*

## CENTRAL CRIMINAL COURT SITTINGS.

1846.	
January 5.	July 6.
February 2 and 23.	August 17.
March 30.	September 21.
May 11.	October 26.
June 15.	

PLAN OF THE DIGEST OF CASES  
INCORPORATED IN  
THE LEGAL OBSERVER.

THE continuation of the Digest being suspended for one week, we take the opportunity of saying a few words on this further improvement in the scope of the *Legal Observer*.

If our readers could sit down and peruse our main divisions of the digest, with the notes or commentaries on the prominent cases therein, we should much prefer that the Commentary should be placed in juxta-position with the Digest;—but neither our space, nor the time or convenience of our readers, render it desirable or possible to unite even a sub-division of the Digest with the corresponding Commentary.

Sometimes the importance of a case will call forth a commentary long before it has appeared in the Digest. We must generally wait several weeks, before we can put forth each section of the Digest, for the nature of the work requires that it should be done at certain stated periods. It is our course therefore to notice every important decision as early as possible, and add such remarks as appear necessary on less material points, when time and occasion permit.

In short, we wish it to be understood, that, whilst we have incorporated the Analytical Digest with the *Legal Observer*, we, in fact, intend, in executing the work of incorporation, to render the Digest, if possible, (what a Digest has never yet been,) a *readable* composition.

Our scheme is—so to arrange, classify, and sub-divide, under appropriate heads, all the various points decided in the several courts, that a practitioner or student may, without any great tax on his time or patience, go over this *posting up* (so to speak) of the “collective wisdom” of the superior courts, and thus keep pace with the ever-changing character of our laws and their modes of administration.

We may not yet have hit upon the best method of effecting our object; but we are satisfied of its utility, and the plan admits of

progressive improvement.\* It has been observed, that the Digest will be too much broken up, and that there may be some trouble in referring to its several component parts. This division into sections of moderate extent, but each *complete in itself*, though collected from various sources, is one of the chief features of the plan, and the Tables of Titles and Contents will afford the means of ready reference. The design, in fact, comprehends as well a scientific as an alphabetical arrangement.

Another part of the Digest will probably be ready by next week.

\* One improvement may consist in closely abridging the frequently elaborate statement of *facts*, and condensing into the smallest possible compass the *points* decided. To this we shall duly attend.

## THE EDITOR'S LETTER BOX.

The anonymous case in the Vice-Chancellor of England's Court, reported in our last number, was confirmed by the Chancellor on Saturday the 17th instant, who dismissed the appeal, but it being the case of a pauper, without costs. Mr. *Astley* for the appeal, referred to the 75 & 76 of the New Orders. Mr. *Yonge*, contra. It was ultimately arranged, with the sanction of the Lord Chancellor, that the defendant should put in a full and sufficient answer within a fortnight.

The Lord Chancellor has promised to give judgment in the first New Order Case (the 67th) which has come before him from the Vice-Chancellor of England.

We trust “A Regular Practitioner” will be satisfied with the notice we have taken of his complaint against canvassing solicitors. We think it unnecessary at present to name the person complained of.

Our correspondent, “An Occasional Reader,” will exercise his own judgment on the standing order he refers to. A committee may decide according to his view of its construction, but writing according to our best judgment and desirous of assisting our readers, we cannot undertake the responsibility of advising them on the doubts which their ingenuity may suggest. We are obliged however by their communications.

The letter of M. W., on Conveyancing Reform, shall be attended to.

We have no doubt that an articulated clerk is and ought to be exempt from the militia.

# The Legal Observer.

SATURDAY, JANUARY 31, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## SUSPENSION OF LAW REFORM.

THE 'all-absorbing subject of the Corn Laws appears to have thrown into the shade the various further projects for the "amendment" or rather the *alteration* of the law, with which we were threatened in the latter part of the last session. The Queen's Speech on the opening of parliament on the 22nd instant, contains no allusion whatever to the long-hacknied topic of Law Reform, and it may reasonably be inferred, therefore, that nothing material is intended to emanate from the government.

Lord Campbell, however, has taken the field in behalf of his favourite plan of a General Register of all Deeds and Instruments affecting real property in England and Wales. The bill for that purpose was presented on the 26th instant, and ordered to be printed.

Amongst the measures which were dropped in the last session, were several of Lord Brougham's introduction, namely,—the Civil Actions Bill for enabling the examination of the parties in an action;—the Declaratory Suits Bill for enabling parties who expected their future rights to be disputed, to have those rights ascertained and declared;—the Divorce Bill for transferring the jurisdiction of parliament to the privy council;—the bill for Abolishing the Facilities of Marriage and Divorce by persons not domiciled in Scotland. Some of these proposals are by no means so objec-

tionable as those which his lordship succeeded in carrying through the last session.

Then there were the Ecclesiastical Courts and Charitable Trusts Bills,—both of great importance:—in some respects beneficial, but in others highly objectionable. Much consideration should be bestowed on the details, if not the principle, of these measures, before they are suffered to proceed.

The Law of Debtor and Creditor undoubtedly requires amendment. The mischief to the community which has followed the recent defective statutes should be removed, and larger powers given over the property of debtors in lieu of the abolition of arrest. Whether Lord Cottenham's comprehensive bill should be revived;—whether the still wider plan of Mr. Serjeant Manning should be considered;—or whether for the present the remedies suggested by Mr. Hawes and Mr. Masterman should be preferred,—may be much questioned. We should be glad to see the subject put into a course of searching investigation by competent practical persons, and well considered before any new act be passed, unless it be some practical enactments to correct the more pressing evils of the present system.

The bills for enabling the service abroad of the process of the common law courts, (as already effected in Equity,) will, we trust, be resumed; and we hope also, that the bills will be revived for abolishing deodands and giving compensation to the representatives of persons whose deaths

have been occasioned by railway or other negligence.

These latter measures would be really useful to the public and favourable to the administration of justice, and we should be sorry to see them delayed; but with regard to the majority of the projected alterations, it would probably be a great boon to the profession if they stood over until another year.\*

In the *House of Commons* nothing has been done for the alteration of the law beyond a few notices:—such as that by Mr. Watson for the further relief of the Roman Catholics;—by Lord John Manners for altering the laws relating to Bequests for Pious and Charitable Purposes;—and by Mr. Ewart for altering the law as to the Punishment of Convicts by Transportation.

§ The following are extracts from the resolutions of the House of Commons:—

#### BUSINESS OF THE HOUSE.

It has been resolved that the house shall meet every Wednesday at 12 o'clock at noon for private business, petitions, and orders of the day; and continue to sit until six o'clock, unless previously adjourned.

That when such business has been disposed of, or at six precisely, notwithstanding there may be business under discussion, the Speaker shall adjourn the house, without putting any question.

#### RAILWAY BILLS.

A select committee has been appointed to consider the mode in which the house shall deal with the railway bills proposed to be submitted during the present session.

### NOTES ON EQUITY.

#### POLICY OF ASSURANCE.—ASSIGNMENT.—NOTICE.—ORDER AND DISPOSITION.

In *Duncan v. Chamberlayne*, 11 Sim. 123, the Vice-Chancellor of England, proceeding upon the principle that notice to one partner is notice to the partnership, determined, that inasmuch as all the in-

surers in the Equitable Insurance Office are partners in the society, the fact of the assignment of a policy by one of the assured, must be taken to be a fact of which the society have notice,—and the interests of parties must be dealt with accordingly.

This reasoning is extremely technical; and it would follow from it, that if a man were to assign a policy of insurance in the above or the like company, and were nevertheless to retain in his possession not only the policy, but also the deed of assignment; and then were to assign the same policy to another person, ignorant of the first assignment; and the second assignee, as a man of prudence, were to give *express* notice of his own transaction to the company, and were to obtain, moreover, the policy of insurance and the deed of assignment out of the hands of the assignor;—still, the constructive notice which the company would be supposed to have had of the first assignment would give that assignment a preference over the second—a result which would be contrary to the great and salutary maxim *vigilantibus non dormientibus jura subveniunt*.

In the number of Mr. Simon's Reports just published, we are glad to find a case in which the Vice-Chancellor has repudiated and overruled his former decision. We are referring to *Thompson v. Spiers*, 13 Sim. 469, where it appeared that one Brassey, in June 1808, insured his life in the Equitable Office for 4,000*l*. In June 1822, in contemplation of his daughter's marriage, he assigned the fruits of the policy to trustees as to one-fourth part thereof for his daughter. But no *express* notice of the transaction was given to the office. The policy and assignment were suffered to remain in the hands of the assignor. In 1835 he became bankrupt. The question arose, whether the policy was in the order and disposition of the bankrupt. That question depended on whether the insurance company were to be held to have had notice of the assignment. For by notice the assignment would have been completed. Now, if the principle of the Vice-Chancellor's decision in *Duncan v. Chamberlayne* were upheld—undoubtedly the policy was *not* in the order and disposition of Brassey at his bankruptcy, because the company had *constructive* notice of the assignment, Brassey being a partner of their establishment—and he of course having notice—they must be considered by fiction of law to have had

\* A bill for relieving High Constables from attendance at Quarter Sessions and Assizes and from certain other duties, and for amending the laws relative to Jurors and Juries, has been presented by the Duke of Richmond, and ordered to be printed.



notice also. But the Vice-Chancellor, on reconsideration, became satisfied that the decision in *Duncan v. Chamberlayne* ought not to be supported, "because," he observed, "in order to take a policy of insurance out of the order and disposition of the assignor, it is essential to the interests of mankind that something should be done of a decisive nature, which may effectually prevent the payment of the proceeds to any other person than the assignee. The Equitable Assurance Company is a very numerous body; and therefore it would be idle to say, that because the assured happens to be a member of the company in a legal sense, any act which he does with reference to his own particular policy is to be taken to be a partnership act, so as to affect the whole body with notice of it. If the parties feel disposed to take the opinion of the Lord Chancellor on the case, it will be very right that they do so—as the point is extremely important. But I must say, that I have no doubt whatever on the subject."

There is little probability that a determination so just and reasonable as this last would be disturbed upon appeal;—more especially when we consider how much it will be found to harmonise with the principles on which the present Chancellor proceeded in deciding the well-known cases of *Dearle v. Hall* and *Loveridge v. Cooper*, 2 Russ. 1, to which the reader's attention may well be directed.

## LECTURES ON THE REAL PROPERTY AMENDMENT ACTS.

### ASSIGNMENT OF OUTSTANDING TERMS' ACT.

MR. CAYLEY SHADWELL, in commencing his 7th Lecture at the Incorporated Law Society on the 16th instant, observed, that he had heard there had been recently a case under the Assignment of Terms Act brought before the Prerogative Court.

According to the account received, there was an application to the court for an administration to a deceased trustee of an outstanding term, limited to that term, (which was the usual practice under the old law,) and that application had, for whatever reason, been refused. Whether such a decision had or had not yet been pronounced, it was quite evident (said Mr. Shadwell) that the ecclesiastical courts must inevitably be very soon called upon to pronounce an opinion upon this point one way or the other; and when they had decided whether or not,

under the act, an administration could be granted to a term that had been put an end to, then they would also be speedily called upon to decide what terms were put an end to; what was a satisfied term within the meaning of the act.

It seemed to be very singular that the first decision upon the meaning of this act should be made by the ecclesiastical courts, the act being so peculiarly a conveyancing act, and the subject matter of it so particularly relating to the doctrine of courts of equity. But it was quite clear that almost all the questions they had been considering with respect to it would arise upon these applications to the ecclesiastical court for letters of administration to the deceased trustees of terms. It was a consequence that could hardly have been thought of, and that probably was not within the contemplation of the legislature when they passed the act. The first clue to guide the practitioner through the difficulties that beset them, appeared to be coming from a quarter where they would have the least expected it.

Via prima salutis

Quod minime reris Graiā pandetur ab urbe.

Exactly the same thing, however, had happened in the interpretation of the new Statute of Wills: almost all the questions that had arisen on the interpretation of that statute:—What amounts to signature; who are competent witnesses; what is the presence of the testator; what the foot of the will; and various other questions of the like nature as to the form of wills, which used, under the old law, to be exclusively discussed in courts of common law or of equity have, under the new statute, all of them, as would be found in Curtis's Reports, been discussed and decided in the ecclesiastical courts upon the question of, whether probate should be granted or refused. The necessity for probate as a preliminary for any dealing with a testator's affairs, was an engine for forcing all these questions arising out of the Statute of Wills on the attention of the ecclesiastical courts; and exactly the same thing appeared to be about to happen as to the Assignment of Terms Act, on the necessity for administration. It would be an immense advantage to practitioners to get decisions on these questions as quickly as possible; but in both cases there was one danger ahead. The ecclesiastical courts formed a jurisdiction entirely independent of the courts of common law and of equity, and the decisions of the one were not binding authorities on the other; and it did not at all follow, that because these questions had been decided one way in the ecclesiastical courts they might not be decided exactly the other way in the courts of common law and equity.

The same questions would inevitably come some day to the courts at Westminster, though there might not be the same necessity to force them there, but when they did come, should it unfortunately happen that there should be conflicting decisions upon them in

the two classes of courts, the condition of the practitioner, having to advise upon these acts would be truly pitiable.

#### REAL PROPERTY AMENDMENT ACT.

The lecturer then resumed the subject of the Real Property Amendment Act—and again adverted to its effect upon the old laws relating to the buying or bargaining of Titles to Land, and those against Charnperty and Maintenance.

The 8 & 9 Vict. c. 106, s. 6, said, that "a right of entry might be disposed of by deed." The first question that arose was;—is this enactment a virtual repeal of the 32 Hen. 8, c. 9. "The bill of brachery and buying of titles;" the 2nd section of which expressly prohibited any person from buying or selling any pretended rights or titles to any manors, lands, tenements or hereditaments, unless they or those through whom they claimed had been in possession a year before the transaction. The new act appeared expressly to authorise that which the statute of Henry expressly forbade; it seemed, therefore, to be a virtual repeal of the old statute, but it was to be regretted, that instead of a virtual there had not been an actual repeal.

It was proper to advert to a difference with regard to the power of selling a claim to property that existed between the different kinds of property. A claim to land, they were by statute prohibited from selling under any circumstances, and that whether at law or, in equity. But with respect to claims to personal property, the prohibition was not so general. A debt which was a claim to the money of another might be assigned in equity, even if a suit had been instituted for its recovery;—it then remaining wholly in the option of the purchaser to prosecute or to discontinue the suit. What might not be done, was the making such a bargain about the debt or other claim to personality as to give the assignee the benefit of the suit, upon condition that he prosecuted it. One of the cases illustrated this difference very well, because, as the affair was first presented to the notice of the court it appeared to be a simple assignment of a claim to personal property, to recover which a suit had been instituted, and upon that view of the matter the court thought, that the transaction was unexceptionable; but when it further appeared that besides this simple assignment there was also an agreement, by which the assignee bound himself to indemnify the assignor against the costs of the suit, then the court thought the whole complexion of the case was altered, and that the agreement tainted the transaction with maintenance, and that, therefore, the whole thing was void. *Harrington and Milligan v. Long*, 2 Mylne & Keen, 590.

The facts were, that Milligan, a creditor of the testator in the suit, had filed a creditor's bill against Long, the executrix of the testator, and having obtained a decree, had, under it, proved his debt in the master's office. Subse-

quant to the decree in this original suit, Milligan sold his debt to Harrington, and then Harrington and Milligan together filed their supplemental bill, praying that Harrington, the purchaser of the debt, might have the benefit of the decree in the original suit. This supplemental bill stated that the defendant Long had proved the will since the decree in the original suit, that no account of the testator's assets had been directed against her in that suit, although she had been made a party defendant to it, as claiming to be entitled to the testator's real estate, under a deed executed by him only five days before his death; and the bill also stated as supplemental matter that the deed was executed when the testator was incapable, and ought to be declared void against creditors. The answer stated the belief of the defendant that the assignment of the debt had been made for the sole purpose of prosecuting the suit, and she submitted that such assignment was contrary to law. There did not appear upon the pleadings any distinct reference to the agreement, which it subsequently appeared that there was, to indemnify Milligan against costs. In this stage of the cause and before the agreement as to costs appeared, the Master of the Rolls, Sir J. Leach, said, "There is no principle which prevents a person from assigning his interest in a debt after the institution of a suit for its recovery. Maintenance is where there is an agreement by which one party gives to a stranger the benefit of a suit upon condition that he prosecutes it. In *Wood v. Downes*, 18 Ves. 120; 2 Sim. & Sta. 249, Lord Eldon thought this was done indirectly: in *Hartley v. Russell*, it appeared to me that it was not done. Maintenance was properly discouraged, because it promoted litigation, and led to oppression. But the mere assignment of a subject of a suit could not be considered as maintenance." There was then some debate as to the production of the deed of indemnity, which was not formally before the court; but upon the court intimating that there was sufficient to induce it to direct an inquiry before the Master as to the existence of the deed, the deed was produced. It proved to be a deed of indemnity from Harrington to Milligan, against the expenses which had been already incurred, or might be incurred, by Milligan, in the prosecution of the suit. The production of the deed entirely changed the complexion of the case. His Honour declared his opinion that this was clearly a case of maintenance, and he dismissed the bill accordingly.

There was a petition of re-hearing before the Lord Chancellor, Lord Brougham, who affirmed the decision of the Master of the Rolls. The reasons of his lordship's judgment are not reported; but the argument of counsel in support of the decision, gives what appears to be a correct view of the law. The leading counsel for the defendant was the Vice-Chancellor, Knight Bruce, then Mr. Knight.

"A chose in action (he said) may undoubtedly be assigned in equity, and it may be assigned, pending a suit for its recovery; but it

is no less certain that such an assignment may be made under circumstances which will render it illegal; and the circumstances which accompanied Harrington's purchase of the debt, as well as the admitted object for which the purchase was made, taint the transaction with maintenance. The question here is not whether a man may or may not lawfully purchase the demand of another, but whether he may intervene in a suit for the purpose of increasing the bulk of litigation.

"It is clearly maintenance to buy a suit for a collateral object; and for the purpose of making that suit the foundation of a mass of litigation; and the instrument by which claims are to be advanced of a totally distinct nature from the subject matter of the purchase.

"It was to secure the seller against the costs and consequences of that fresh mass of litigation that the deed of indemnity was given, and it was upon that ground that the Master of the Rolls properly laid so much stress upon that instrument.

"The purchase was not made simply to carry on Milligan's suit, but to impeach the validity of a deed on the ground of fraud; and for that purpose a great number of witnesses have been examined, and the pleadings increased to an enormous bulk. The mere assignment of the debt, had it been made *bona fide* for an adequate consideration, would have been an innocent transaction; but the deed of indemnity discloses the real nature of the dealing between the parties, and proves that the purchase was made with a view to the litigation which was in fact subsequently engrafted upon the original suit.

"In *Burke v. Greeme*, 3 Ball & Beat. 517, it was observed by Lord Manners, that if the buyer of an interest which is the subject of a suit, has a private end to answer by getting the suit into his hands, that is neither more nor less than dealing for a suit in Chancery, which the court will not allow. That is precisely the present case—a purchase made for such a purpose is, according to all the authorities, maintenance, and the bill, therefore, was rightly dismissed."

The effect, then, (said Mr. Shadwell,) of the late statute he apprehended to be, that the law having previously prohibited a transfer of a claim to land, but not having prohibited a transfer of a claim to personal property; the new act put the transfer of claims to both kinds of property upon the same footing, allowing for the future the transfer of the claim to land, the same as it had before allowed the transfer of the claim to personalty.

The laws against maintenance and champerty appeared to stand as they did before. Any taint of either of them would still vitiate any transaction, whether as to land or to money. The policy of that part of our law might be right or might be wrong, but was not affected by this present law.

In one particular, however, there would still, said Mr. Shadwell, be a difference

between claims to real and claims to personal property. The claim to personal property, the chose in action, was only assignable in equity. The claim to real estate, under the new act, was assignable at law. He next adverted to the assignment of other rights of entry;—the rights of entry for condition broken.

By the early law, the right of the lessor to enter upon and oust his lessee for breach of condition contained in the lease, was incapable of being exercised by any except the lessor or his heirs; in other words, could not be assigned. Thus, in Littleton's *Tenures of Estate on Condition*, sec. 347, Co. Litt. 214 a, Littleton says: "The second thing is, that no entry or re-entry (which is all one) may be reserved or given to any person, but only to the feoffor or to the donor, or to the lessor, or to their heirs, and such re-entry cannot be given to any other person. For if a man letteth land to another for term of life by indenture, rendering to the lessor and to his heirs a certain rent, and for default of payment, a re-entry, &c.; if afterward a lessor, by a deed, granteth the reversion of the land to another in fee, and the tenant for term of life, attorne, &c., if the rent be after behind the grantee of the reversion may distrain for the rent, because that the rent is incident to the reversion; but he may not enter into the land, and oust the tenant, as the lessor might have done, or his heirs, if the reversion had been continued in them, &c.; and in this case, the entry is taken away for ever; for the grantee of the reversion cannot enter *causd quâ suprà*; and the lessor nor his heirs cannot enter; for if the lessor might enter, then he ought to be in his former state, &c.; and this may not be because he hath aliened from him the reversion." on this Lord Coke's commentary was;—"That no entry, &c. Here Lyttleton recited one of the maxims of the common law, and the reason hereof, is for avoiding of maintenance, suppression of right, and stirring up of suits; and, therefore, nothing in action, entry, or re-entry, can be granted over; for so, under color thereof, pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppressed, which the common law forbiddeth men to grant before they are in possession."

At this early period the assignee of a lessor was, during the lease, prevented from entering and ousting the tenant for breach of condition, whether the breach had happened after or before the assignment. Then came the statute 32 Hen. 8, c. 34, on which Co. Litt. 215 a, says, "Another diversity there is between the judgment of the common law, whereof Littleton wrote, and the law at this day, by force of the statute of 32 Hen. 8, cap. 34; for by the common law no grantee or assignee of the reversion could (as hath been said) take advantage of a re-entry by force of any condition; for at the common law, if a man had made a lease for



life, reserving a rent, &c., and if the rent be behind a re-entry, and the lessor grant the reversion over, the grantee should take no benefit of the condition, for the cause before rehearsed. But now by the said statute of Hen. 8, the grantee may take advantage thereof, and upon demand of the rent and nonpayment, he may re-enter; by which act it is provided that as well every person which shall have any grant of the king of any reversion, &c., of any lands, &c., which pertained to monasteries, &c., as also all other persons being grantees, or assignees, &c., to or by any other person or persons, and their heirs, executors, successors, and assignees, shall have like advantage against the lessee, &c., by entry for the nonpayment of the rent, or for doing of waste, or other forfeiture, &c., as the said lessors or grantors themselves ought or might have had."

Under this statute of 32 Hen. 8, c. 34, a lessor might assign to a purchaser the benefit of the conditions in the lease. It was considered, however, that for an assignee to avail himself of the benefit of a condition in the lease, it was necessary that the breach should have taken place subsequent to the assignment. Any breach of condition that might have taken place previous to the assignment, it was understood to be the law, that the assignee could not take advantage of; and the particular alteration that the lecturer understood this part of the statute to make, was that it enabled the purchasers of landed property subject to lease, to take advantage of breaches of condition that had occurred previous to their purchase.

Mr. Shadwell observed, that on this part of the act one or two objections might possibly be raised.

Suppose a lease to have been made some time ago, and breach of condition to be made, and then the lessor to sell to the present holder, as things lately stood, the present holder could not avail himself of the breach that occurred previous to his own time; but then, if the present holder sold to a third person, it would seem that by the operation of this act, that third person might avail himself of the breach that occurred during the time of the original lessor, but which the intermediate holder could not make use of; and so, the lessee would find his rights unpleasantly varied. To this apparent injustice there was probably some answer, though he did not know what it was.

The section itself, it must be observed, was in point of clearness and precision an immense improvement on the corresponding section in the repealed statute, which was full of blunders both of commission and of omission.

"That after the first day of October, 1845, a contingent, an executory and a future interest, and a possibility coupled with an interest, in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility, be or be not ascertained; also a right of entry whether immediate or future, and whether vested or contingent, into or upon any tenements or

hereditaments in England, of any tenure, may be disposed of by deed; but that no such disposition shall by force only of this act, defeat or enlarge an estate tail; and that every such disposition by a married woman, shall be made conformably to the provisions relative to dispositions by married women of an act passed in the 3 & 4 Will. 4, intituled, an act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance; or, in Ireland, of an act passed in 4 & 5 Will. 4, intituled, an act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance in Ireland (8 & 9 Vict., c. 106, s. 6.)

In the corresponding section of the repealed act, the words properly guarding the conveyance under this section, when made by a married woman, were omitted, apparently more from carelessness than any thing else; for a clause, comprising the substance of the new enactment, had been inserted in the bill, in its passage through the House of Lords, and then in some very unaccountable manner, had been struck out in the Commons.

One great question, then, on the repealed statute was:—Could married women, under it, convey their executory and contingent interests, rights of entry, and so on? In commenting on that part of the former act, the learned lecturer went into an argument, to show that they could; but of the lawyers that he had since had the opportunity of talking that clause over with, the great majority, as he was bound to say, held that they could not. Certainly, very great absurdities would have followed from holding that married women could convey, without the proper solemnities and safeguards; but if they were not included, it was a great omission, as they were to the full as much within the inconvenience intended to be remedied, as any body else. The repealed statute was still the law, as to most parts, for the period between 1st January and 1st October, in last year; so that though not very probable, it was quite possible, that the question might still be to be debated, whether under it married women could or could not convey.

## POINTS IN COMMON LAW.

### WHEN ONE PARTNER BEING AN ATTORNEY MAY BIND HIS CO-PARTNER.

THE rule, that one of two partners is not competent to bind the firm, in a matter not within the usual scope of the partnership business, was exemplified in a case in the Court of Queen's Bench, lately reported, in which the defendants were attorneys; and at the same time it was observed, from the bench, that an undertaking by attorneys to pay debt and costs for their client, in order to obtain his release from custody, was not given in pursuance of the ordinary practice of attorneys.

It appears that William Foster Dick was in custody on a *capias ad satisfaciendum* sued out of the Court of Exchequer at the suit of the plaintiff, and that Samuel Young, the son of the co-defendant, William Young, was employed by the defendant Dick to arrange his affairs and get him out of custody. In pursuance of such employment, Samuel Young gave the plaintiff a written undertaking, in the following terms:—

"John Hasleham against Wm. Foster Dick."

"In consideration of the plaintiff giving the defendant his discharge from custody in this action, we hereby agree to pay to the plaintiff, or his attorney, Mr. Geo. Wright, the sum of 99*l.* 11*s.* (being the amount of debt and costs,) and subsequent costs herein, and interest on such debt, together with interest on such sum of 99*l.* 11*s.* from the date hereof, on the 9th June, 1841, or such part thereof as shall not have been previously paid, the said defendant having also given his warrant of attorney for the amount, payable at six months from the date hereof. Dated this 9th day of June, 1840."

"YOUNG & SON."

"Witness, Geo. Ellis, &c."

Although the guarantee, when produced, was in the above form, it appeared that originally it was signed, "Young & Son, Defendant's Attorneys," but that the last two words had been

struck out by Samuel Young, the son. There was no evidence of authority from the father to the son to give the undertaking, nor any proof of the course of business of the firm in this respect. A verdict was taken for the plaintiff, with leave to move to enter a nonsuit.

In showing cause against the rule for leave to enter a nonsuit, it was argued on behalf of the plaintiff, that as the two defendants were in business as attorneys, there was sufficient authority from the course of business for either partner to give a guarantee in the name of the two. On the other hand, it was contended, that as no knowledge or privity was shown on the part of the senior partner, he could not be bound by the undertaking of his son; and of this opinion was the court.

Lord Denman, C. J., remarked, that even if both the defendants had been the attorneys for the defendant Dick, the father would not be bound by the son having given this undertaking, unless more were shown: And *Patterson, J.*, added:—"There is no evidence that the guarantee was given in pursuance of the ordinary practice of the parties, and certainly, such a transaction is not in the usual course of the business of attorneys."

The rule to enter a nonsuit was therefore made absolute.

## APPLICATIONS FOR ADMISSION AS ATTORNEYS.

*Easter Term, 1846.*

*Queen's Bench.*

### *Clerks' Names and Residences.*

### *To whom Articled, Assigned, &c.*

Aikman, John Robertson, 68, Great Portland Street

Andrew, Robert, Doncaster

Bingham, Joseph, 44, Lincoln's Inn Fields

Birch, Henry, Church Street, Westminster; Hadleigh

Bouta, Charles, 9, Rodney Buildings, New Kent Road

Branson, Thomas Sands, 8, Montague Place, Islington; Sheffield; and Store Street

Batt, Henry, 4, City Terrace, City Road; and Windsor Terrace

Boykett, Thomas Hebbert, 1, Belinda Terrace, Islington

Bowen, Charles Burrin, 22, Holles Street, Cavendish Square; Boconnoc; Plymouth; and Clapham

Burgess, John, 5, Brunswick Street, Trinity Square

Bramall, H. James Marmion, 7, Panton Sqr.; and Tamworth

Cowdry, Nathaniel, 9, Carlton Villas, Kilburn Road; and Burton Crescent

Charles Pearson, Guildhall

Edward Sheardown, Doncaster

William Thorpe, Thorne

Arthur Iveson, Hedon

W. Martin Wilkinson, Lincoln's Inn Fields.

Isaac Last, Hadleigh

Frederick Bowker, Winchester

Thomas Branson, Sheffield

John Cotes Fourdrinier, Dyers' Hall

Beaumont C. Luttly, Dyers' Hall

Edward Smith, Chancery Lane

Robert Stephens, Plymouth

William Hannen, Shaftesbury

Thos. Brook Bridges Stephens, Tamworth

Charles Bayly, Frome Selwood

Charles Clarke, Lincoln's Inn Fields

- Clarke, William, 1, Pavia Place, Dalston; and Coleman Street  
 Chilwell, George, 60, Great Portland Street; and Warwick  
 Channing, Henry, Taunton  
 Cockle, Henry, King Street, New Town, Deptford  
 Cross, Thomas Plomer Lewis, 28, Surrey St., Street, Strand; and Barnes Terrace  
 Church, Henry Francis, 9, Bedford Row  
 Crammond, David William, 5, York Place, Barnesby Park, Islington  
 Chapman, Frederick, 14, Frith Street, Soho Square  
 Cotton, Francis Josias, 6, Maze Pond, Southwark; and Pentonville  
 Coode, Edward, jun., 37, Queen Square, Bloomsbury; and St., Austell  
 Curteis, Edward, 2, Hemus Terrace, King's Road, Chelsea; and Montagus Street  
 Cowper, William John, 3, Mornington Crescent; and Canterbury  
 Carr, William, Pantou Square; Settle; York  
 Dean, Edward Howard, Liverpool; and Albert Street, Victoria Square  
 Dendy, Samuel Frederick, 16, Montague St., Russell Square  
 Dodd, Henry, 7, Wakefield Street, Brunswick Square; The Riding, near Hexham; King Street; and New Milman Street  
 Day, James, 1, Howard Street, Surrey Street, Strand; Newbury; and Kensington  
 Dacie, William, 3, Foxley Place, Camberwell New Road  
 Davies, John Pryce, 15, Cranmer Place, Waterloo Road; and Welchpool  
 Dawbarn, Robert, jun., Wisbeach St. Peter  
 Edwards, John, Lincoln's Inn Fields  
 England, Richard, 18, Stanhope Street, Hampstead Road; and Kingston-upon-Hull  
 Eam, William, Sheffield  
 England, Charles, 16, Marchmont Street, Brunswick Square; and Wisbeach St. Peters  
 Ellison, Thomas Michael, 8, Granby Street, Hampstead Road; Bath; Huntley Street; and Great Quebec Street  
 Faithfull, Edward Williams, Winchester; and King's Road, Bedford Row  
 Fleetwood, Thomas Perrior, 1, Queen Square, Bloomsbury; and Howard Street, Strand  
 Fellowes, Henry Butler, 14, Victoria Road, Grosvenor Place  
 Friend, James Walter, 26, Burton Crescent  
 Fletcher, Arthur Piggott, 5, Essex Court; and Mortimer Street  
 Falkner, John Stringer, 13, Camden Terrace, Camden Town; and Bath  
 Fowler, James, 24, Great Ormond Street, Queen's Square; and Birmingham  
 Finnis, Robert, Turnham Green; and Hart Street  
 Fraser, Edward John, 24, Sidmouth Street, Regent Sq.; Pentonville; and Islington  
 Thomas Tilson, Coleman Street  
 Charles Handley, Warwick  
 Robert Uttermare Bullen, Taunton  
 George Mathais, Taunton  
 John Sandom, Deptford  
 Williams Sandom, Deptford.  
 William Henry Cross, Surrey Street  
 John Thomas Church, Bedford Row  
 Thomas Warry, New Inn  
 George Warry, New Inn  
 James Johnston, Chancery Lane  
 Charles H. Rhodes, Chancery Lane  
 Charles Small, Bideford  
 Robert Slee, St. John's, Southwark  
 Edward Coode, St. Austell  
 Thomas Mortimer Cleobury, Sackville Street  
 William Sladden, Canterbury  
 William H. Wright, Essex Street  
 John Hartley, Settle  
 George Dudgeon, new Settle  
 George Hartley  
 Edward Guy Deane, Liverpool  
 Samuel Dendy, Bream's Buildings  
 Richard Gibson, Hexham  
 Robert Fuller Graham, Newbury  
 William Scudamore Dacie, Throgmorton Street  
 Sir George Stephen, Farnival's Inn  
 Charles Thomas Woosnam, Newtown  
 Joseph Jones, Welchpool  
 Edward Jackson, Wisbeach St. Peter  
 Robert Medcalf, Lincoln's Inn Fields  
 Morris Griffith, Bangor  
 John England, Kingston-upon-Hull  
 William Wake, Sheffield  
 Charles Metcalfe, jun., Wisbeach St. Peter  
 Edward King, Bath  
 Edward Chamberlain Faithfull, Winchester  
 Henry Everett, Salisbury  
 George B. Townsend, Salisbury  
 John William Wall, Devizes  
 Edward F. Fennell, Bedford Row  
 Charles Brutton, Exeter  
 John North, jun., Liverpool  
 Francis Falkner, Bath  
 George Paulson Wragge, Birmingham  
 James Robertson, Southampton Buildings  
 Robert Fitz Finnis, Hart Street  
 Charles Gaines, Caroline Street, Bedford Sq.  
 Lawford Acland, late of Chancery Lane  
 Henry Charles Chilton, Chancery Lane

- Fox, Charles James, 4, University Street, Bedford Square; and Canterbury . . . . .  
 France, F. Augustus Harold, 8, County Terrace, New Kent Road . . . . .  
 Gibson, Charles Reginald, 1, Park Terrace, Well Street, Hackney; and Lewisham . . . . .  
 Garnham, Richard Enoch; article as Richard only, 33, Gower Place, Euston Square . . . . .  
 Gill, Thomas Husband, 5, Gloucester Street, Bloomsbury; and Devonport . . . . .  
 Gartside, Benjamin, Free House Bank, near Ashton-under-Lyne . . . . .  
 Gidley, Robert Courtenay, 28, Earl Street, Blackfriars . . . . .  
 Griffith, Thomas Aubrie, 10, Buckingham St., Strand; and Somerset Street . . . . .  
 Gabriel, Samuel Hawkes, 80, Lombard Street; and Plymouth . . . . .  
 Griffin, Arthur, Shelton; and 26, Carey St. . . . .  
 Guy, Henry, 2, Cherry Tree Court, Aldersgate Street; Ipswich; and Howden . . . . .  
 Gee, Robert, 17, Pakenham Street, Gray's Inn Road; and Stratton . . . . .  
 Grimley, Henry, Market Drayton . . . . .  
 Gratrex, Thomas Price, Adelphi Chambers, Adelphi; Monmouth; Beaufort Buildings; Vere Street; and Frederick Street . . . . .  
 Hewson, Frederick, Wroughton, Somerset; and Balham Hill, Surrey . . . . .  
 Robert Sankey, Canterbury . . . . .  
 John Wood, Falcon Street . . . . .  
 John Widdows, Cophall Court . . . . .  
 John R. Gibson, Cophall Court . . . . .  
 Thomas Brightwell, Norwich . . . . .  
 James Husband, Devonport . . . . .  
 Edward Brown, Oldham . . . . .  
 William Buckley, Ashton-under-Lyne . . . . .  
 John Honeywood Townsend, Honiton . . . . .  
 Edward Stephens, Llandaffe . . . . .  
 Thomas J. Clark, Bishopsgate Churchyard . . . . .  
 Nicholas Lockyer, Plymouth . . . . .  
 Thomas Griffin, Shelton . . . . .  
 John Sanderson Archer, Ossett . . . . .  
 William Allatt, Ossett . . . . .  
 William Jacomb, Huddersfield . . . . .  
 Robert B. Porter, Howden . . . . .  
 Cadwallader Edward Palmer, Barnetaple . . . . .  
 Edward Shearn, Stratton . . . . .  
 Charles Warren, Market Drayton . . . . .  
 James Powles, Monmouth . . . . .  
 Francis J. Ridsdale, Gray's Inn Square . . . . .  
 Bryan Holme, New Inn . . . . .  
 John James, Wroughton . . . . .

[This List will be continued next week.]

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.\*

### I. Ecclesiastical Courts.

#### ADMINISTRATION.

1. Motion; for a decree to cite the next of kin of an intestate to accept or refuse letters of administration, otherwise, to show cause why such administration should not be granted to a stranger; a nominee of certain plaintiffs in a suit in equity, rejected, though a general grant was held necessary by the Vice-Chancellor of England. *In the goods of Ann Chanter*, 1 Rob. 273.

2. If a party be entitled to a grant in a superior, the court will not make that grant to such person in an inferior, character. *In the goods of Rebecca Bullock*, 1 Rob. 276.

#### ADULTERY.

See Divorce.

#### BURIAL.

To justify a conviction of a clergyman under the 68th canon, for "refusing or delaying to bury the corpse of a parishioner, brought to the

churchyard," it must be proved, that "convenient warning" was given beforehand of the intention to bring the corpse. What will constitute the warning convenient must depend on the circumstances of the case. *Titchmarsh v. Chapman*, 1 Rob. 175, S. C.; 3 Curt. 703, 840.

Cases cited: *Clovel v. Cardinal*, 1 Sid. 34; *Davis v. Black*, 1 Adol. & E., N. S. 900.

#### CLERGYMAN.

*Roman Doctrine*.—An unbeficed clergyman being proceeded against under the general ecclesiastical law, for maintaining and affirming, contrary to the true, usual, literal meaning of the articles of the established church, all Roman doctrine, and being convicted thereof, inhibited from performing any ministerial duty whatever, within the province of Canterbury, until he shall retract his errors. It was held, as the offence charged was for maintaining and affirming all Roman doctrine, not to be necessary to specify in the articles any doctrine in particular. *Hodgson v. Oakley*, 1 Rob. 322.

Case cited: *Salter v. Davis*, 1692, Court of Delegates; *Whiston's Case*, 1713, Court of Delegates; *King's Proctor v. Stone*, 1808, 1 Conn. Rep. 424; *Sanders v. Head*, 3 Curt. 565.

#### COMMUNION TABLE.

An immovable structure is not a communion table within the meaning of the Rubrics of the Book of Common Prayer and Canons Ecclesiastical; nor is there any authority for the use

\* In order to save the time of our readers and our own space, we have abridged the statement made by the learned reporters of some of the points decided.

of a credence table. Therefore, a faculty to confirm the same was refused. *Faulkner v. Litchfield*, 1 Rob. 184.

#### CONJUGAL RIGHTS.

See *Marriage*.

#### CRUELTY.

See *Divorce*.

#### DIVORCE.

1. *Cruelty* is not pleadable by a wife, by way of defence to a charge of adultery brought against her, except in conjunction with a re-criminatory charge of adultery. *Cocksedge v. Cocksedge*, 1 Rob. 90.

Cases cited: *Durant v. Durant*, 1 Hagg. 733; *Chambers v. Chambers*, 1 Cons. 439; *Chettle v. Chettle*, 3 Phil. 507; *Arkley v. Arkley*, 3 Phil. 500; *Worsley v. Worsley*, 1 Hagg. 734 n.; *Popkin v. Popkin*, 1 Hagg. 765 n.; *Eldred v. Eldred*, 3 Curt. 376; *Scrivener v. Scrivener*, Nov. 10, 1835, not reported.

2. *Adultery*.—The proof of adultery in a suit for divorce, depending upon the evidence of one witness alone, held to be insufficient to entitle the promotor to his prayer. *Evans v. Evans*, 1 Rob. 165.

Cases cited: *Crompton v. Butler*, 1 Con. Rep. 460; *Hutchins v. Deuziloe*, 1 Con. Rep. 181; *Donellan v. Donellan*, 3 Hagg. 144, Supp.; *Theakston v. Marson*, 4 Hagg. 313; *Richardson v. Desborough*, Ventr. 291; 2 Salk. 547; *Ld. Raym.* 221.

3. *Connivance* to constitute a bar to a divorce by reason of adultery, must be corrupt. *Phillips v. Phillips*, 1 Rob. 144, S. C.; 3 Curt. 796.

Cases cited: *Rogers v. Rogers*, 3 Hagg. 57; *Timming v. Timmings*, 3 Hagg. 81; *Moorsom v. Moorsom*, 3 Hagg. 106-7; *Crewe v. Crewe*, 3 Hagg. 106; *Reeves v. Reeves*, 2 Phil. 125; *Hoar v. Hoar*, 3 Hagg. 140.

4. *Obscene and disgusting language* on the part of a husband, entire disregard of decorum, will not alone constitute connivance. Facts to constitute connivance must have a direct and necessary tendency to cause adultery to be committed or continued, and such adultery must be clearly proved. *Stone v. Stone*, 1 Rob. 98.

#### DOMICILE.

The law of domicile, considered, as regulating testacy and intestacy, in the case of a British subject long resident as a merchant at Smyrna, and dying there, having regard to the treaties between Great Britain and the Ottoman Empire. *Maltass v. Maltass*, 1 Rob. 67.

Cases cited: *Ship Indian Chief*, 3 Robinson, 28; *Ship Angelique*, ib., Appendix B. p. 7; *Moore v. Budd*, 4 Hagg. 346; *Doe v. Aclom*, 2 B. & Cress. 779; *Doe v. Mulcaster*, 5 B. & Cress. 771; *Collier v. Rivaz*, 2 Curt. 855.

#### EVIDENCE.

*Proof of pedigree*.—Evidence in a pedigree cause. A verdict of a jury of a manor rejected,

as *res inter alios acta*. *Maule v. Mounsey*, 1 Rob. 40.

Cases cited: *Neale v. Wilding*, 2 Stra. 1151; 1 Phillippis on Evidence, 234; *Attorney-General v. Hotham*, 1 Turn. & Russ. 217; *Johnson v. Lawson*, 2 Bing. 88.

See *Will*; *Divorce*.

#### FOREIGN LAW.

See *Domicile*.

#### MARRIAGE.

1. *Colonial Act*.—A marriage purporting to have been had under authority of the Colonial Act of New South Wales, passed on the 4th of July, 1834, held not to be invalid by reason of a non-compliance with its provisions, there being no words therein expressly creating a nullity. *Quere*, unless there be in a marriage act such words, whether any other words could be held to import a nullity. *Catterall v. Sweetman*, 1 Rob. 304.

Cases cited: *Rex v. The Justices of Leicester*, 7 B. & C. 12; *Daivson v. Gill*, 1 East, 71; 2 Inst. 388; *Rex v. Inhabitants of Birmingham*, 8 B. & C. 34; *Stallwood v. Tredger*, 2 Phill. 287.

2. *Nullity*.—Sentence of nullity of marriage pronounced, by reason of a natural incurable malformation of the female. *D—v. A—g*, 1 Rob. 279.

3. *Restitution of conjugal rights*.—An allegation was given in by a wife responsive to a libel for a restitution of conjugal rights, pleading in bar thereto, cruelty, and praying a divorce. Held, that the facts as detailed in evidence on that allegation, did not warrant the conclusion, "that a return to cohabitation would expose to danger, or reasonable risk thereof, the personal safety of the lady." In consequence, her prayer was refused, and that of the husband for a return to cohabitation was pronounced for. *Earl of Dysart v. Countess of Dysart*, 1 Rob. 106.

#### PEDIGREE.

See *Evidence*.

#### WILL.

1. The principles and practice as to incorporating in the probate of wills of personalty, papers sufficiently referred to by such wills, but not *per se* testamentary. *Sheldon v. Sheldon*, 1 Rob. 81.

Cases cited: *Masterman v. Maberly*, 2 Hagg. 235; *Thorold v. Thorold*, 1 Ph. 1; *The Attorney-General v. Jones*, 3 Price, 366; *Tompson v. Brown*, 3 Myl. & Keen, 32; *Plume v. Beale*, 1 P. Wms. 388; In the goods of *Dickens*, 3 Curt. 60; *Dillon v. Harris*, 4 Bligh, 342.

2. *Attestation. Alterations*.—Presumption of law as to compliance with the requisites of the 9th section of the 1 Viet. c. 26. If upon the face of a will, to which there is no memorandum of attestation, there be the signature of the testator at the foot or end thereof, and the subscriptions of two witnesses, in the absence or death of the witnesses, the *prima facie* presumption is, that the testator signed in the joint

presence of the two witnesses, and that they subscribed in his presence. If the subscribing witnesses do not remember the facts attendant upon the execution of the will, the presumption is the same. If the subscribing witnesses negative compliance with the requisites of the 9th section, the will cannot be pronounced for, unless their evidence be rebutted, by showing, 1st, that the witnesses cannot be credited, or 2nd, that upon the statement of the facts their memories are defective.

Alterations on the face of a will, unaccounted for by evidence, are *prima facie* presumed to have been made after execution. *Burgoyne v. Showler*, 1 Rob. 5.

Cases cited: *Gove v. Gawen*, 3 Curt. 151; *Cooper v. Bockett*, ib. 648; *Pennant v. Kingscote*, ib. 642; *Newton v. Clarke*, 2 Curt. 320; *Blake v. Knight*, 3 Curt. 547; In the goods of *Colman*, 3 Curt. 118; *Todd v. Winchelsea*, 2 Carr. & P. 488.

3. *Attestation*.—Two persons subscribed a paper in the presence of S. L., and of each other, S. L. having previously in their joint presence acknowledged the paper to be his will. The witnesses did not see S. L. sign his name, nor did they, at the time of subscribing their names see his signature, the writing upon the paper being purposely concealed from them. Upon the death of S. L. his signature was found at the end of the paper. *Held*, that this was not a valid will, within the 9th section of the 1 Vict. c. 26. *Hudson v. Parker*, 1 Rob. 14.

Cases cited: *Hott v. Genge*, 8 Curt. 160, affirmed, Privy Council, 20 Feb. 1844; *Peate v. Aagley*, Comyn, 196; *White v. The Trustees of the British Museum*, 6 Bing. 310; *Newton v. Clarke*, 2 Curt. 320; *Brandling v. Barrington*, 6 B. & Cress. 475; *Longford v. Eyre*, 1 P. Wms. 741; *M'Craw v. Gentry*, 3 Cam. 232; *Doe d. Burdett v. Spilbury*, 6 Man. & Gr. 386; 10 Clark & F. 340; *Lord Coke*, 4 Report, 47.

4. *Attestation*.—One of two attesting witnesses to a will, is competent, under 1 Vict. c. 26, s. 9, to sign for a testatrix, at her direction. *Smith v. Harris*, 1 Rob. 262.

Case cited: In the goods of *John Bailey*, 1 Curt. 914.

5. *Attestation*.—A will being attested in the constructive presence of a testatrix, it must appear, that, though she was blind, she could, had she had her eye-sight, have seen the witnesses sign. In the goods of *Charlotte Piercy*, 1 Rob. 278.

6. *Knowledge of contents*.—To entitle a testamentary paper to probate, there must be proof of the testator's knowledge of the contents of the paper. Such proof may be given in any mode; the degree necessarily depends upon the circumstances of each case. Where the capacity is undoubted, knowledge of the contents may be presumed, from execution of the paper. Where the capacity is impaired, or the drawer of the paper largely benefited by it, the proof must be adequately stringent, and the court

must be satisfied of knowledge of the contents, by proof beyond the bare fact of execution.

Where capacity is impaired, the simplicity or complexity of the instrument is a material ingredient in the case.

Although a will originally valid cannot be affected by subsequent instruments, short of express revocation, yet subsequent instruments may reflect back upon, and tend to elucidate the question, whether such will is valid or not. *Durnell v. Corfield*, 1 Rob. 51.

Cases cited: *Butlin v. Barry*, 1 Curt. 614; *Welles v. Middleton*, 1 Cox, 112.

7. *Opposing probate*.—The bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper. *Kipping v. Ash*, 1 Rob. 270.

Cases cited: *Partridge's case*, 2 Salk. 552; *Wright v. Rutherford*, 2 Sir G. Lee's cases, 266.

8. *Parol evidence*.—The rule laid down in *Walpole v. Cholmondeley*, 7 T. R. 138, S. C.; 3 Ves. 402, as to the application of extrinsic evidence, to explain or correct testamentary instruments, applied to a will of personality, since the 1 Vict. c. 26. In the goods of *William Chapman*, 1 Rob. 1.

9. *Revocation*.—A testator by his "last will," in which executors were appointed, disposed of a part only of his personal estate, and did not expressly revoke a former testamentary paper; the two were not wholly inconsistent, but there was no evidence to show that he intended them to be taken conjointly as his will. *Held*, that the paper of the earlier date was in effect revoked by his "last will." *Plenty v. West*, 1 Rob. 264.

Cases cited: *Duppa v. Mays*, 1 Saund. 279, b, (6th edit.); *Henfrey v. Henfrey*, 2 Curt. 468.

10. *Soldier*.—Will of a soldier made at Bangalore, in the East Indies, whilst in command of the Mysore division of the army there stationed, and who died whilst on a tour of inspection of the troops under his command, not admitted to probate, not being executed according to 1 Vict. c. 26, and not being held to be within the exception contained in sec. 11. In the goods of *Major-General Hill*, 1 Rob. 276.

Case cited: *Drummond v. Parish*, 3 Curt. 527.

## II. English and Irish Appeals.

### BOUNDARIES.

See *Lease*.

### FRAUDS, (STATUTE OF.)

See *Marriage Articles*.

### INFORMATION.

An information filed by the Attorney-General at the relation of A. and B., praying for the crown the benefit of a judgment in outlawry against C., and that a deed executed by C. conveying his property to trustees, might be set aside as fraudulent and void against the crown, contained short statements showing the interest of the relators, and alleging that

the motives for the deed were to defraud C.'s creditors: *Held*, that these statements were not impertinent.

Exceptions for impertinence cannot be sustained unless it appears clearly that the statements excepted to cannot be material at the hearing of the cause.

Although it is not necessary that a relator in an information should have an interest in the subject of the suit, yet a statement showing his interest is not impertinent, as in the event of the suit failing, the costs may be more easily apportioned. *Rickards v. Attorney-General*, 12 Clark & F. 30, S. C.; 1 Ph. 383; 6 Bea. 444; and see *Doe d. Feull v. Greenhill*, 4 Barn. & Ald. 684; *Nector v. Gennett*, Cro. Eliz. 466.

See notes on this case, p. 233, *ante*.

#### LEASE.

By lease made in 1719, the lessee demised, for three lives, renewable for ever, all that part of the townland of B., containing 509 acres arable, meadow, and pasture, bounded on the south by D., on the north and east with L. N., and on the west with T.'s and W.'s land, with all rights thereto belonging, excepting and reserving all mines, quarries of stone and coal, and all royalties, and all timber above and under ground. There were several renewals of the lease, in the same terms as to the contents and boundaries of the demised premises: *Held*, by the Lords, affirming judgments of the courts in Ireland, that 400 acres of bog, and land reclaimed from bog, which were situated within the ambit of the specified boundaries, passed under the lease and the renewals thereof, in addition to the 509 acres arable, meadow, and pasture. *Jack v. McIntyre*, 12 Clark & F. 151, S. C.; 3 Tr. Law Rep. 140; 5 Tr. Law Rep. 229.

Cases cited: *Doe v. Lyford*, 4 Maul. & Selw. 557, 8; *Doe v. Bower*, 3 Barn. & Ad. 459, 60; *Wooden v. Osbourn*, Cro. Eliz. 674.

#### MARRIAGE ARTICLES.

A representation made by one party for the purpose of influencing the conduct of another, and acted on by him, will in general be sufficient to entitle him to the assistance of a court of equity, for the purpose of realising such representation.

And so in proposals of marriage: if the parent, or his agent, deliberately holds out inducements to the suitor to celebrate the marriage, and he consents and celebrates it, believing it was intended that he should have the benefits so held out to him, a court of equity will give effect to the proposals.

Proposals of marriage, written by the lady's brothers, acting by her father's authority, stated that "Mr. J. P. T. (the father) also intends to leave a further sum of 10,000*l.* in his will, to Miss T., to be settled on her and her children, the disposition of which, supposing she has no children, will be prescribed by the will of her father. These are the bases of the arrangement, subject, of course, to revision; but they will be sufficient for Baron B. to act upon." Baron B., upon receiving the proposals, pro-

vided a jointure, as required by them, for his intended wife, and then married her. In the settlement, afterwards executed, there was no mention of this sum of 10,000*l.*; and it was not left by J. P. T. in his will: *Held*, that his estate was liable to the payment of the 10,000*l.*, with interest from the end of one year after his death.

*Semble*, that a letter, written and signed by the father, after the marriage, admitting the terms of the written proposals, which were not signed, was a recognition of them as his agreement, and sufficiently signed by him within the statute of frauds. *Hammersley v. Baron de Biel*, 12 Clark & F. 44; S. C. 3 Bea. 469.

Cases cited: *Hodgson v. Hatchenson*, 5 Vin. Abr. 522; *Cookes v. Maschall*, 5 Vern. 200; *Wankford v. Fotherley*, 2 Vern. 322; *Luders v. Anstey*, 4 Ves. 501; *Randall v. Morgan*, 12 Ves. 67; *Taylor v. Beech*, 1 Ves. 297; *Mountaine v. Maxwell*, 1 Stra. 236; *Howard v. Braithwaite*, 1 Ves. & B. 202; 29 Car. 2, c. 3; *Proper v. Parker*, 1 Russ. & M. 625; *Montgomery v. Reilly*, 1 Bl. N. S. 364; 1 Dow. & Clark, 62; *O'Reilly v. Thompson*, 4 Cox, 271; *Logan v. Wienholt*, 1 Clark & F. 611.

#### PERSONALTY.

Where money is directed to be vested in land or other security, but the conversion has not, in fact, taken place, until the whole interest—whether in land or money—has become vested absolutely in one person, any act of his, indicating an option in which character to take or dispose of it, will determine the succession as between his real and personal representatives.

A testator gave his residuary estate to his wife, and appointed her his executrix, with the tuition of his younger children, and to provide for them with regard to their fortunes; and he advised her thus:—"As to my son John, I would have 250*l.* a-year paid him, until a sum of 10,000*l.* can be invested in land, or some other securities, which is to be invested in trustees, for his use, as to the interest of such money, or produce of such lands, for his natural life; and if he marries with consent, &c., that he may make such settlement on such wife, &c., as you may judge proper; and that the remainder may go to such child or children he may have lawfully begotten; but in failure of these, to my eldest son, Isaac, and his heirs for ever."

The sum of 10,000*l.* was vested, partly in personal securities, and partly on mortgage of real estate; and on the death of John, without having any child, his widow, being entitled to the interest for life, and Isaac entitled to the principal on her death, by their acts indicated their intention to take the fund as money. Isaac survived the widow, and died intestate: *Held*, that even if the fund had been impressed by the will with the character of real estate—which was doubtful—it was re-converted into personality by the subsequent acts of the party absolutely entitled; and, therefore, it belonged to the next of kin of Isaac, and not to his heir.

*Cookson v. Cookson*, 12 Clark, & F. 121; S. C. 5 Bea. 22.

Cases cited: *Preble v. Boghurst*, 1 Swanst. 332; *Earlom v. Saunders*, Amb. 214; *Johnson v. Arnold*, 1 Ves. sen. 169; *Cowley v. Hartington*, 1 Dow. 364; *White v. Carter*, Amb. 671; *Sonor v. Curwen*, 5 Sim. 264; *Jervoise v. the Duke of Northumberland*, 1 Jac. & W. 570; *Woolmays v. Burrows*, 1 Sim. 525; *Stead v. Newdigate*, 2 Meriv. 521, 531; *Pulteney v. Earl of Darlington*, 1 Bro. C. C. 223, 7 Bro. P. C. 553; *Chichester v. Bickerstoft*, 2 Vern. 295; *Symons v. Rutter*, 2 Vern. 227; *Lechmere v. Earl of Carlisle*, 3 P. Wms. 211; *Walker v. Denne*, 2 Ves. jun. 170; *Wheldale v. Partridge*, 8 Ves. 235; *Thornton v. Hawley*, 10 Ves. 129; *Swann v. Foonereau*, 3 Ves. 49, 50; *Davies v. Goodbaw*, 6 Sim. 589; *Lingen v. Sowray*, 1 F. Wms. 172; *Bowes v. Earl of Shrewsbury*, 5 Bro. P. C. 309; *Edwards v. Lady Warwick*, 3 P. Wms. 171-4; *Trafford v. Boehm*, 3 Atk. 449; *Crabtree v. Bramble*, 3 Atk. 680; *Stamper v. Miller*, 3 Atk. 312; *Curling v. May*, cited 3 Atk. 255; *Triquet v. Thornton*, 25 Ves. 345.

#### SURETY.

A surety is not of necessity entitled to receive, without inquiry from the party to whom he is about to bind himself, a full disclosure of all the circumstances of the dealings between the principal and that party.

If he requires to know any particular matter, of which the party about to receive the security is informed, he must make it the subject of a distinct inquiry.

An obligation to a banker by a third party to be responsible for a cash credit to be given to one of the banker's customers, is not avoided by the fact, that immediately after the execution of the obligation, the cash credit is employed to pay off an old debt due to the banker.

If the surety intends to rely upon such a fact for his defence, as showing that there was a previous agreement between the banker and the customer to deal with the credit in a particular manner, to which he, if he had known it, should not have consented, he must bring such a defence before the court by putting it on the record. *Hamilton v. Watson*, 12 Clark & F. 109; S. C. 5 Bell, Murr. Don. & Y. 280.

Cases cited: *Glyn v. Hertel*, 8 Taunt. 208; 2 Moore, 124; *Smith v. The Bank of Scotland*, 7 Shaw & Dunl. 244; 7 Dow. 272; *Leith Banking Company v. Bell*, 8 Shaw & Dunl. 721; 5 Wils. & Sh. 205; *Pideock v. Bishop*, 3 Barn. & Cress. 605; *Stone v. Compton*, 5 Bing. N. C. 142; 6 Scott. 846; *Railton v. Mathews*, 10 Clark & F. 934; 3 Bell, 56.

### III. *Scotch Appeals.*

#### ATTORNEY.

An attorney or law agent is only responsible in damages to his client for gross ignorance or gross negligence in the performance of his professional services.

A declaration, or a summons against an attorney or a law agent to recover damages for a loss occasioned by his management of a cause, must charge gross ignorance or gross negligence, or must, at least, contain allegations of facts, from which the inference is inevitable, that the defendant has been guilty of one or the other.

The law as to both these matters is the same in England and in Scotland. *Purves v. Landell*, 12 Clark & F. 91; S. C. *Landell v. Landell*, 3 Dunl. Bell, M. & D. 819; 16 Dunl. Bell, & Murr. 388; *Landell v. Purves*, 4 Bell, Murr. & D. 1300, 1543.

Cases cited: *Baikie v. Chandless*, 3 Camp. 17; *Stuart v. Miller*, 3 Dunl. Bell, M. & D. 255; *Morrison v. Ure*, 4 Shaw and Dunl. 656; *Campbell v. Clason*, 1 Dunl. Bell & Murr. 270; 2 ib. 1115; *Donald v. Yeats*, 1 Dunl. Bell & M. 1249; *Stevenson v. Rowand*, 2 Dow. & Clark, 104; *Lang v. Strathers*, 2 Wils. & Shaw, 563; *Pitt v. Yalden*, 4 Burr. 2060; *Bulkley v. Wilford*, 2 Clark & F. 102; *Donaldson v. Hal-dane*, 7 Clark & F. 762; *Graham v. Alison*, 9 Shaw & Dunl. 130; 6 Wils. & Shaw 518; *Hart v. Frame*, 6 Clark & F. 193.

And see notes on this case, 31 L. O. p. 173.

### IV. *Colonial Appeals.*

#### CHURCH FEES.

The Vicar-General of the Roman Catholic Church at Gibraltar, is liable to account for the fees received by him for administering the offices of the church, such fees being by custom regulated, and subject to the control of the assembly of elders or junta, of which he is the head, and disposed of by them for the general purposes of the church. Decree granting injunction against the receipt of such fees by the Vicar-General, and directing him to replace in certain parts of the church, the tariff or table thereof, varied by dissolving the injunction, and decreeing him only to account as receiver, for all sums paid to him on account of the same.

The privy council has no jurisdiction to direct the release of a party imprisoned for a contempt of the court below, pending an appeal respecting the merits of the suit. *Hughes v. Porral*, 4 Moore, 41. And see *Jephson v. Riera*, 3 Knapp, 130; *Lubbock v. Potts*, 7 East, 449; *Campbell v. Hall*, 1 Cowper, 204; *Cameron v. Kyte*, 3 Knapp, 332.

#### CONTEMPT.

The House of Assembly of the Island of Newfoundland does not possess, as a legal incident, the power of arrest, with a view of adjudication on a contempt committed out of the house; but only such powers as are reasonably necessary for the proper exercise of its functions and duties as a local legislature.

*Semble*.—The House of Commons possesses this power only by virtue of ancient usage and prescription; the *lex et consuetudo parliamenti*.

*Semble*.—The crown, by its prerogative, can create a legislative assembly in a settled colony.



subordinate to parliament, but with supreme power within the limits of the colony for the government of its inhabitants; but

*Quere*, Whether it can bestow upon it an authority, viz., that of committing for contempt, not incidental to it by law. The principles of *Beaumont v. Burnett*, 1 Moore, 59, and *Burdett v. Abbott*, 14 East, 137, examined. *Kielley v. Carson*, 4 Moore, 63.

Cases cited: *Blankard v. Galdy*, 2 Salk. 411; *Campbell v. Hall*, 20 State Trials, 439; *Burdett v. Abbott*, 14 East, 136-7, 159; *Beaumont v. Barrett*, 1 Moore, 59, 76; *Stockdale v. Hansard*, 9 Adol. & E. 1; *Gregory v. Hill*, 8 Term. 299; *Duppa v. Mays*, 1 Saunders, 286, note; *Smith v. Nicholl*, 5 Bing. N. G. 208; *S. C.* 7 Scott, 147; *Greene v. Jones*, 1 Saunders, 297; *Dutton v. Howell*, Showers, P. C. 24; *Reg. v. Patten*, 2 Ld. Ray, 109-10, 1105; *Reg. v. Gossett*, 3 Per. & D. 362; *Ferrier's Case*, 1 Hats. Pre. 56-57; *Rex v. Faulkner*, 2 Crom. M. & R. 525; *Anderson v. Dunn*, Wheaton, 204, N. S.; *Hall v. Campbell*, Cowper, 213, S. C.; *Lofft*, 655; 20 State Trials, 326-7; *Cropper v. Horton*, 8 D. & R. 166; *Bennett v. Watson*, 3 M. & S. 1; *Mayler v. Lamb*, 7 Taunt. 63; *Wellesley v. Duke of Beaufort*, 2 Russ. & M. 639; *In re Ludlow Charities*, 2 Myl. & Cr. 316; *Barlee v. Barlee*, 1 Add. Ecc. Rep. 361; *King v. Clerk*, 1 Salk. 349; *Lord Shaftsbury's cases*, 6 How. St. Tri. 1269, 1371, S. C.; 1 Mod. Rep. 144; *Money v. Leach*, 19 How. St. Tri. 1002 S. C.; 3 Burr. 1742, and 1 Wm. Blac. 554; *Calvin's case*, Coke's 7 Rep.; *In re Canadian Prisoners*, 5 Mee. & Wells, 32.

#### CROWN REVENUE.

The Royal Court of Jersey have no power to order charges for alterations made in the court house, directed at their instance, to be defrayed out of the crown revenues of the island. Judgment of the court of Jersey, declaring the Attorney-General and Receivers of the island liable for such charges, reversed on appeal, with costs.

Leave given to appeal, though the subject matter of the suit was below £200, the sum required by the Order in Council of 13th May, 1823, and the appeal refused by the royal court. *Attorney-General of Jersey v. Capelain*, 4 Moore, 37.

#### DOMICILE.

See *Legacy Duty*.

#### JURISDICTION.

See *Church Fees*.

#### LEGACY DUTY.

Personal property, having no situs of its own, follows the domicile of its owner.

The law of the domicile of a testator or intestate, decides whether his personal property is liable to legacy duty.

A British born subject, died, domiciled in a British colony. At the time of his death, he was possessed of personal property, locally situate in Scotland. Probate of his will was taken out in Scotland, for the purpose of there administering this property; and out of the fund thus obtained by the executor, legacies

were paid to legatees residing in Scotland. *Held*, reversing a judgment of the Court of Exchequer in Scotland, that legacy duty was not payable in respect of these legacies. *Thomson v. Advocate-General*, 12 Clark & F. 1, S. C. 13 Sim. 153.

Cases cited: *Attorney-General v. Forbes*, 2 Clark & F. 48; *Pipon v. Pipon*, Ambler, 26; *Logan v. Fairlie*, 2 Sim. & Stu. 284; 1 Myl. & Cr. 59; *Attorney-General v. Cookerill*, 1 Price, 165; *Attorney-General v. Beatson*, 7 Price, 560; *Arnold v. Arnold*, 2 Myl. & Cr. 256; *Attorney-General v. Jackson*, 8 Bli. N. S. 15; *In re Ewin*, 1 Cr. & Jer. 151; 1 Tyr. 92; *In re Bruce*, 2 Cr. & Jer. 436; 2 Tyr. 475; *Attorney-General v. Dunn*, 6 Mee. & Wels. 511; *In re Coates*, 7 Mee. & Wels. 390; *Thorne v. Watkins*, 2 Ves. 35; *Jackson v. Forbes*, 2 Cr. & Jer. 383; The Commissioners of Charitable Donations v. Devereux, 13 Sim. 14; *Doe v. Acklam*, 2 Barn. & Cres. 779.

#### PRACTICE.

In ranking creditors under an execution sale, the Court of British Guiana declared by definitive sentences, the petitioner's constituent's claim preferential. Appeals were interposed from the sentences. Pending the appeals, the petitioner filed a petition in British Guiana, praying the court to proceed to judgment of *pro et concurrentie*, and to award the monies to be paid to him, *sub cautione de restituendo*. This the Court refused. The petitioner then applied *ex parte* to her Majesty in council, to reverse the order of refusal, and for an order upon the judges in British Guiana, directing them to entertain the petitioner's application. *Held*, by the judicial committee, that an *ex parte* petition, under such circumstances, could not be entertained. *In re Butts*, 4 Moore, 98. See *In re Muir*, and *In re Assignees of Manning*, 3 Moore, 150, 154.

#### PRINCIPAL AND SURETY.

Circumstances under which it was held an appeal by the judicial committee, discharging the injunction, and reversing the decree of the supreme court, that the redemption of securities deposited, was a sale within the meaning of the condition contained in the deposit; and that such sale was not a release to the surety for the previous bills, the condition not being, that the proceeds should be applied preferentially, or *pari passu* with the other debts, but simply in reimbursement of the principal and interest due on the bills. *The Bank of Bengal v. Radakissen Mitter*, 4 Moore, 140.

Cases cited: *Young v. The Bank of Bengal*, 1 Moore, 150; *Wright v. Simpson*, 6 Ves. 714-26; *Law v. East India Company*, 4 Ves. 824; *Boulbee v. Stubbs*, 18 Ves. 20; *Mayhew v. Crickett*, 2 Swan. 185; *Browne v. Carr*, 3 Russ. 600, S. C. 7 Bingh. 508; *Spears v. Hartly*, 3 Esp. 81; *Wade v. Coope*, 2 Sim. 155, 160.

#### VENDOR AND PURCHASER.

A. sold to B. a plantation in Barbies. The purchase money was secured by bills of ex-

change, drawn by B. on houses in England. And as a further security, B., on receiving a transfer of the estate, hypothecated the same to A., for the amount of the purchase money then due on the bills, with interest and damages accruing thereon, declaring such mortgage to be a first and preferent charge. Some of the bills were protested and returned to the colony, and the plantation was in consequence sold, under an execution-sale, at the suit of A. The Supreme Court of British Guiana, in adjudicating the claim of A. and the other creditors of B., held A. to have a preferential claim for the principal and interest due upon the protested bills, but refused to allow such right for the damages consequent thereon. The decree, so far as it refused the preferential right for damages, held erroneous, and reversed.

An interlocutory order, referring matters of account to the sworn accountant of the court of civil justice in Berbice, with instructions thereon, is not such a definitive sentence, as by the rules of the civil law requires a specific appeal, but may be questioned on a general appeal from the final sentence of the court. *Cameron v. The Representatives of James Fraser, deceased*, 4 Moore, 1. See *ex parte Marlar*, 1 Atk. 151.

## V. Ecclesiastical Appeals.

### BAPTISM.

A child baptized with water, in the name of the Trinity, by a layman (a Wesleyan Methodist) not authorised to administer the rite of baptism, *Held*, not to be "unbaptized," within the meaning of the rubric for the burial of the dead, in the Common Prayer Book, as incorporated into the Uniformity Act, 13 & 14 Car. 2, c. 4.

A clergyman of the Church of England having refused to perform the office of interment, after due notice of the death of a parishioner, so baptized, suspended from the ministry for three months, under the 68th Canon of 1603.

Construction of the rubrics of the Common Prayer Books of the years 1603 & 1661. *Held*, to be cumulative, and not substitutory, of the rubric in force anterior to 1603, and not to affect the validity of lay baptism. *Escott v. Martin*, 4 Moore, 104. S. C. 2 Curt. 692.

Cases cited: *Gale v. Lawrie*, 5 Barn. & Cress. 156; *Martin v. Ford*, 5 Term. R. 101; *Andrews v. Cawthorne*, Willes, Rep. 536; *Rex v. Coleridge*, 2 Barn. & Ald. 806; *Kemp v. Wickes*, 3 Phill. 264; *Attorney-General v. Pearson*, 3 Mer. 405; *Dalrymple v. Dalrymple*, 2 Hagg. Con. Rep. 64.

### BURIAL.

See *Baptism*.

### CONTEMPT.

A party in contempt for not obeying a monition, whose contempt has been signified under 53 Geo. 3, c. 127, and a writ *de contumace capiendo* extracted against him, is not precluded from appealing from the principal sentence,

though pronounced in *panam*. Protest against permission to appeal, under such circumstances, overruled. *Harrison v. Harrison*, 4 Moore, 96, S. C.; 3 Curt. 1; and see *Herbert v. Herbert*, 2 Phill. 430, S. C.; Con. Rep. 263; *Fitzgerald v. Fitzgerald*, 2 Lee's cases, 263.

### DIVORCE.

Sentence of nullity of marriage, *caused impotentia*, pronounced on confession of non-consummation, and refusal to undergo inspection. *Harrison v. Harrison*, 4 Moore, 96, S. C.; 3 Curt. 1.

Cases cited: *Cumyngs v. Cumyngs*, 2 Phill. Rep. 10; *Aleson v. Aleson*, 2 Lee's cases, 576; *Guest v. Guest*, 2 Hagg. Con. Rep. 325; *Brown v. Brown*, 1 Hagg. Ecc. Rep. 523; *Anon*, 2 Mod. Rep. 314; *Pollard v. Wybourn*, 1 Hagg. Ecc. Rep. 725; *The Countess of Essex's case*, 2 State Trials, 785; *Owen v. Owen*, 2 Hagg. Ecc. Rep. 261.

### EVIDENCE.

1. Evidence not adduced in the court below, or forming part of the transcript, admitted on motion to be used at the hearing of the appeal, subject to all just exceptions. *Hughes v. Porral*, 4 Moore, 41.

Cases cited: *Jephson v. Riera*, 3 Knapp, 130; *Meiklejohn v. Attorney-General of Lower Canada*, 3 Knapp, 328; *Mellin v. Mellin*, 2 Moore, 493.

2. A medical certificate of the competency of the party in a suit, *impotentia causâ*, not in evidence in the court below, refused to be admitted on appeal. *Harrison v. Harrison*, 4 Moore, 96, S. C.; 3 Curt. 1.

Cases cited: *The Duchesse of Kingston's case*, 20 State Trials, 355; *Sabell's case*, 2 Dyer, 179, (a); *Stafford v. Mangay*, cited 4 Vin. Abr. 220; *Morris v. Morris*, & *Dick v. Dick*, not reported.

3. The admission of a witness that he is a member of a religious sect, who hold a certain principle as a body, which, if acknowledged individually, would subject him to excommunication *ipso facto*, by the 12th canon of 1603. *Held* insufficient to disable him from giving evidence in the suit; and

*Quære*, If excommunication *ipso facto* (if not absolutely abolished, by stat. 53 Geo. 3, c. 127) disables a party from being a witness until absolved. *Escott v. Martin*, 4 Moore, 104, S. C.; 2 Curt. 692.

Cases cited: *Scrimshire v. Scrimshire*, 2 Hagg. Con. 395, 399; *Grant v. Grant*, 1 Lee's cases, 592; *Coke's 1st Inst.* 133, 6 B. ii. c. 2; *Baker v. Brent*, Cro. Elis. 680; *Viner v. Eaton*, Hotley, 86; *Dyer v. East*, Ventris, 246; *Forman v. Mounson*, 3 Dyer, 275 (b).

### EXCOMMUNICATION.

See *Evidence*.

### WILL.

*Revocation*. A testator left two substantive wills, each disposing of his entire property.

By the first, dated in 1838, he appointed executors, to one of whom he gave the residue of his estate. By the second will, dated in 1839, which contained no revocation of the prior one, he gave the whole of the property to his wife, with the exception of 5*l.*; but appointed no executors. *Held*, affirming the decree of the court below, that the second will operated as a revocation of the first will, and was alone entitled to probate.

*Semble*. Where a party, objecting to a paper annexed to letters of administration, has been by the court assigned to declare whether he propounds another instrument, it is irregular and inconclusive, instead of following up the assignation, to have the question decided upon petition. But such procedure estops the parties from further litigation.

A reply on the hearing of the appeal allowed, though not allowed by the practice of the court below on the original hearing of the act on petition. *Henfrey v. Henfrey*, 4 Moore, 29; see 2 Curt. 468.

Cases cited: *Beard v. Beard*, 3 Atk. 73; *Timewell v. Perkins*, 2 Atk. 102; *Bridges v. Bridges*, Vin. Abr. tit. Dev. (o. b.) 13; *Ingram v. Strong*, 2 Phill. 312, 313; *Methuen v. Methuen*, 2 Phill. 426; *Hughes v. Turner*, 3 Hagg. Ecc. Rep. 30; *Masterman v. Maberly*, 2 Hagg. Ecc. Rep. 236.

## VI. Admiralty Appeals.

### BOTTOMRY BOND.

A bottomry bond may be good in part, though void for the residue.

Where, therefore, a bottomry bond was given by the master at New York, as well for advances to obtain his discharge from arrest, at the instance of the consignees, on account of damage done on the voyage to part of the cargo, as for payment of the port duties and other disbursements necessary to enable the ship to prosecute her voyage; the judicial committee, reversing so much of the decision of the Admiralty Court as rejected the bond *in toto*, sustained the bond to the extent of the sums advanced for necessary supplies and payment of the port duties.

If reliance is placed upon a difference between the law of England and a foreign state, the party relying upon the difference is bound by witnesses or authorities to prove such fact. *Smith v. Gould*, *The Prince George*, 4 Moore, 21.

Cases cited: *The Augusta*, 1 Dod. Rep. 283; *The Vibilia*, 1 W. Robinson, 1; *The Jane*, 1 Dod. Rep. 461; *The Zodiac*, 1 Hagg. Adm. Rep. 320; *Thomson v. The Royal Exchange Insurance Company*, 1 Maul. & Sel. 30; *Abbott on Shipping*, 128-130; 1 Kame's Essays; *Mercatores*, 128; 3 Kent's Com. 168; *The General Smith*, 4 Wheaton, Sup. Ct. of U. S. Rep. 498.

### FOREIGN LAW.

See *Bottomry Bond*.

### OWNER.

See *Pilot Act*.

### PILOT ACT.

The 6th Geo. 4, c. 125, s. 58, does not exempt the masters and owners of vessels having a licensed pilot on board, from liability in respect of damages done by their vessel, unless the damage was solely caused by the neglect, default, incompetency or incapacity of the pilot.

Where, therefore, it was proved that the accident happened through the carelessness of the master and crew, as well as the pilot, in not keeping a good look-out, the judicial committee of the Privy Council held, affirming the sentence of the Admiralty Court, that the civil liability of the owner, in respect of damages, continued. *Stuart v. Isenmonger*, *The Ship Diana*, 4 Moore, 11; See 1 W. Robinson's, Adm. Rep. 131.

Cases cited: *Bennet v. Moita*, 7 Taunt. 258; *Ritchie v. Bowsfield*, 7 Taunt. 309; *The Christiana*, 2 Hagg. Adm. Rep. 183; *Caruthen v. Sydebotham*, 4 Maul. & Selw. 77; *The Girelams*, 3 Hagg. Adm. Rep. 169; *The Neptune the Second*, 1 Dod. 467; *Pipen v. Cope*, 1 Camp. 434; *Gale v. Laurie*, 5 B. & C. 156.

## VII. Patents.

Extension of the term of letters patent refused, although the profits derived from the patent article was less than the expenditure incurred upon the patent; the utility of the invention being small.

The fact of an invention, when known, not getting into general use, is a presumption against its utility. *Re Simister's Patent*, 4 Moore, 164. See *Erard's Patent*, *Webster's Pat. Cases*, 557.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

#### HUSBAND AND WIFE.—RECEIVER.—FEE.—COSTS.

*The husband of a feme covert entitled to separate property settled to her separate use, without power of anticipation, is not entitled to the interference of the court for the appointment of a receiver on his behalf, of the rents and profits of such property.*

*Where one of three trustees appears separately from his co-trustees, he may be entitled to his costs, if there are circumstances to justify such separate appearance.*

By the settlement made on the marriage of the plaintiff and his wife, dated the 5th of March, 1833, a sum of 4000*l.*, and certain other property, were assigned to two of the defendants, and another trustee who had since died, upon trust to pay the interest, dividends, and annual produce of the trust funds during the joint lives of the plaintiff and his wife, to such

persons only as the wife should, from time to time, notwithstanding her coverture, by any writing or writings under her hand, but not so as to dispose of the same by any sale, mortgage, charge, or otherwise in the way of anticipation, direct or appoint, and in default of such direction or appointment, into her hands, and her receipts alone were declared to be sufficient discharges; and after the decease of the plaintiff or his wife, then to the survivor; and after the decease of the survivor, to stand possessed of such interest and dividends, and of the stocks, funds, and securities in or upon which the trust monies should be invested upon trust for the children of the marriage. In July 1834, the defendant Weston was appointed trustee in the place of the trustee who had died. In 1836, the trustees were induced, at the request of the plaintiff and wife, to invest a portion of the trust property, amounting to about 2000*l.*, in the purchase of certain copyhold premises at Lambeth, contrary to the trusts of the settlement; and in order to indemnify them for so doing, the plaintiff and his wife joined in a deed of indemnity to the trustees, which was executed on the 30th of December, 1837, and in which the property settled was treated as trust property. From the time of the completion of the purchase until the month of August 1844, the trustees had permitted the plaintiff to receive the rents of the property, as their agent; but having had reason to be dissatisfied with his conduct, they appointed their solicitor, as their agent, to receive the rents at a small annual salary. The plaintiff being dissatisfied with this arrangement, instituted a suit against the trustees, in which he claimed a beneficial interest in the property, on the grounds of his having expended a large sum of money in repairs and improvements, and of there being an understanding that he was to have a lease at a certain rent, and to this suit he made his wife a defendant. A motion was now made on his behalf for the appointment of a receiver, and for an injunction to restrain the trustees from interfering in the receipt of the rents, and from proceeding with an action which they had commenced against one of the tenants, and that the plaintiff might be at liberty to propose himself as the receiver.

Mr. *Shebbeare*, for the motion, contended, that as the husband and wife were both desirous that the rents should continue to be received as heretofore, there was no reason why the expense of appointing another person for the purpose should be incurred, and that the plaintiff had also a considerable claim upon the property for his expenditure upon it.

Mr. *Chandler*, for the wife, supported the motion.

Mr. *Kindersley* and Mr. *Müller*, for two of the trustees, stated, that until the trustees deemed it their duty to take upon themselves the control of the property, in consequence of the improper conduct of the plaintiff, he had always treated the property as trust property; and the trustees denied that there was any agreement or understanding as to his having a

lease granted to him, as had been recently alleged by him. The only ground upon which the motion could be supported was, that of expense to the estate by the appointment of an agent to collect the rents; whereas the salary agreed to be paid by the trustees to their agent was only 12*l.* a year, and the expense of this motion, and of the appointment of a receiver, would be ten times that amount.

Mr. *Glasse* for the other trustee.

The *Master of the Rolls*, after stating the trusts of the settlement, and the investment made of the trust property in the houses, mentioned in the pleadings, said that there was no ground whatever for the application. The wife might have grounds of claim, and she might have reason for impeaching the conduct of the trustees, in which case she might come to the court for relief; but the trustees had full power to employ who they pleased to receive the rents. The plaintiff, therefore, not being entitled to come to the court to make any such application, the motion must be dismissed, with costs.

Mr. *Shebbeare* suggested, that as the three trustees ought to have appeared together, they should not be allowed two sets of costs; but

The *Master of the Rolls* said, that as it was stated the trustee who had appeared separately resided at a considerable distance from his co-trustees, and might not have had the means of immediately communicating with them, there was a reason for his applying to a solicitor in his immediate neighbourhood, and therefore his costs ought to be allowed.

*Wiles v. Cooper.* January 12th, 1846.

### Queen's Bench.

(Before the Four Judges.)

CERTIFICATE FOR COSTS UNDER 5 & 6 W. 4, c. 50, s. 95.

*A certificate for costs under the 5 & 6 W. 4, c. 50, s. 95, can only be given by the judge who tries the indictment, where it appears in evidence affirmatively that the road in question is a highway.*

At a special sessions, held February 23rd, 1843, the surveyor of highways for three several divisions of the township of Downholland, in the county of Lancaster, was summoned in pursuance of the 5 & 6 W. 4, c. 50, s. 94, touching and concerning the repair of a certain road in that township. When the case was heard before the magistrates at sessions, the surveyor denied that the road in question was a highway, and also denied the liability of the inhabitants to repair such road. The magistrates directed a bill of indictment to be preferred, to which the defendants pleaded not guilty. The case was tried before Mr. Justice Coltman, at the Liverpool spring assizes, 1844. The indictment alleged an immemorial custom on the part of the defendants to repair all roads within their township, which would be otherwise repaired by the parish. At the trial, the evidence adduced by the prosecutors failed to prove the custom as alleged in the indictment,

and the learned judge stopped the case, and directed a verdict to be taken for the defendants. In April 1845, application was made to the learned judge for the costs of the prosecution, who, after hearing counsel on both sides, made the following order:—

"The way in dispute in this case being maintained, on the one side, to be a public way, and the prosecutors being prepared with evidence to prove it to be so; and it being contended, on the other side, that it was an occupation way only, and the defendants being prepared with evidence in support of their case on that point; but it being clear that, even if it were a public way, the defendants were not liable to repair the same; and the jury having found their verdict acquitting the defendants on the latter ground only, without being called upon to decide the question, whether the way was a public highway or not;— I order that the costs of the prosecution be paid out of the rate made and levied in pursuance of the 5 & 6 W. 4, c. 50, s. 95, by the township of Downholland.

"(Signed,) T. COLTMAN."

Mr. Cowling obtained a rule nisi calling on the prosecutors to show cause why that certificate should not be set aside.

Mr. Starkie showed cause.

The justices at special sessions have represented the road to be a highway, the affidavits show it to be a highway, and the prosecutors at the trial were prepared to show that it was such; it must therefore be presumed to be a highway within the meaning of the 95th section of the act, and the learned judge had jurisdiction to make this order for costs.

Mr. Cowling, *contra*.

In *Regina v. Heanor*<sup>a</sup> it was held that the 95th section did not attach where the way indicted was not proved to be a highway. Here it is left doubtful whether the road in question is a highway or not: the surveyor denied it to be a highway, and he also denied the duty and obligation of the defendants to repair. The defendants were prepared with evidence to show that the road was not a highway, as well as that no such custom existed as the one alleged. (Stopped by the court.)

Lord Denman, C. J.—In order to give jurisdiction to grant costs, it must appear to us affirmatively, and not by way of inference, that the road indicted is a highway.

*Williams and Wightman, Js.*, concurred.

Rule absolute.

*The Queen v. The Inhabitants of Downholland.* Michaelmas Term, 1845.

#### Queen's Bench Practice Court.

INSOLVENT.—PROTECTION UNDER STAT.  
7 & 8 VICT. c. 70, s. 7.

*A protection granted by a commissioner of the court of bankruptcy to a debtor under the stat. 7 & 8 Vict. c. 70, s. 7, "upon the ex-*

*amination" of the debtor's petition, cannot be extended from time to time.*

THE defendant being a debtor, "unable to meet his engagements with his creditors, and not being a trader within the meaning of the statutes relating to bankrupts," on the 7th of July 1845, petitioned the court of bankruptcy for protection from arrest under the statute 7 & 8 Vict. c. 70; and Mr. Commissioner Goulburn having examined into the matter of the petition, made an order, whereby he granted protection to the petitioner, from the 14th of July till the 4th of October, under the provisions of section 7, and appointed that a meeting of all the creditors should be held, according to section 2, on the 1st of October. The commissioner subsequently enlarged this protection from time to time till the 6th of December. The meeting appointed for the 1st of October took place, and a second meeting was convened on the 18th of the same month, pursuant to sections 4 and 5. Pending the original order for protection, namely, between the 14th of July and the 4th of October, the defendant was arrested at the suit of the plaintiff, under a writ of *exigi facias*, but was discharged upon producing his protection. After the expiration of the original order of protection, but during the extended protection, on the 14th of November, he was again arrested under the same writ; and the sheriff's officer then, notwithstanding the enlarged protection, refused to release him, and he had been in custody ever since.

A rule having been obtained, calling upon the plaintiff to show cause why the defendant should not be discharged out of custody, and why the plaintiff should not pay the costs of this application,

*Martin* now showed cause, upon an affidavit, which stated that no notice whatever had been given to the plaintiff of the said meetings of creditors, and facts showing that the protection in question had not been granted under section 6 of the statute above referred to. He contended, that inasmuch as protection had been granted "upon the examination of the petition," under section 7, and as that section only empowered the commissioner to grant a "temporary and limited protection" "for such time as should be specified" therein, he had no authority to extend it from time to time. After the second meeting of creditors, an extended protection might be granted, under section 6, but there the words "from 'time to time' are introduced." Here, however, it being perfectly clear that the commissioner did not act under the 6th section, this rule must be discharged.

*Bramwell*, *contra*. The act intended to provide for protection throughout the whole proceedings, and this could not be given unless a protection granted under section 7 could be enlarged from time to time.

*Patteson, J.* It seems to me that the object of section 7 was to secure the attendance of the debtor at the first and second meetings of creditors, and that a protection can only be

<sup>a</sup> 1 New Sess. Cases, 466. 29 L. O. 269.

granted under that section "upon the examination of the petition." I also think that a protection given under that section cannot be prolonged. In the 6th section, providing for protection after the second meeting, the words, "from time to time" are inserted; but that protection is only binding against creditors who had notice of the meetings as required by the previous sections. This rule must therefore be discharged, but without costs.

Rule discharged accordingly.

*Mazeman v. Davis*, Michaelmas Term, Nov. 24, 1846.

**Exchequer.**

**SALE OF RAILWAY SHARES.—REGISTRATION OF COMPANY.**

*The 26 section of the 7 & 8 Vic., c. 110, which prohibits the sale of shares in a joint-stock company, until such company shall have obtained a certificate of complete registration, does not apply to railway companies which cannot be carried into effect without an act of parliament: such railway companies require provisional registration only.*

To a declaration for work and labour, money lent, and money paid, the defendant pleaded, that after the passing of an act of parliament for the registration, incorporation, and regulation of joint stock companies, (7 & 8 Vict. c. 110,) the plaintiff, on behalf of the defendant, sold divers, to wit, five thousand shares in certain joint stock companies, commenced after the 1st of November, 1844; and that the work and labour was done, and the money lent and paid, for the defendant, in the sale of the said shares; and that at the time of such sale, the companies had not obtained a certificate of complete registration, as required by the act. To this plea there was a replication, to which the defendant demurred; but it was agreed by counsel that the case should be decided on the sufficiency of the plea.

*Jervis*, who argued in support of the plea, referred to the 2, 26, 23, 24, & 25 sections of the 7 & 8 Vict. c. 110, and contended that the language of the 26th section was large enough to include all joint stock companies, whether they required the assistance of parliament to carry them into execution or not.

*Martin*, contra, contended, that on comparing the 2nd section with the 26th, it was evident that the legislature did not intend that the latter should apply to any joint stock company which could not be carried into effect without an act of parliament. He also referred to the 4, 7, 9, 14, 23, & 25 sections.

*Pollock*, C. B. (after stating the pleadings.) The question is, whether this is a good plea. I am of opinion, that upon the true construction of the 26th section, a railway company does not come within its provisions. The 2nd section contains an express proviso,—which is equivalent to an enactment,—that that statute shall not apply to certain companies named, (including railway companies), which cannot be carried into execution without the authority

of parliament. Then follows the proviso, "except as hereinafter is specially provided." In the 26th section, there is no special provision with reference to railway companies. It must be taken that a railway is a matter which requires the authority of parliament, unless in the particular case of persons making a railway on their own land; and if this company were of that description, it should have been so stated. The 2nd section having expressly provided that the act shall not extend to any railway company, the 26th section makes void all contracts for the sale of shares before complete registration, and renders every person making such contract liable to a penalty. The question, then, is whether, notwithstanding there is no special provision extending that clause to railway companies, we are to extend it by implication. I think not. If the meaning of the legislature is doubtful, upon comparing those two sections together, and considering the legal effect of the language of the one and the other, we cannot pronounce parties selling these shares liable to a penalty. It is satisfactory to discover what was probably intended by the legislature, and we are bound, whenever we can, to give effect to such intention. The argument of Mr. *Jervis* requires that railway companies should have a certificate of complete registration; but if such a certificate is not necessary, it furnishes a strong presumption that the legislature did not mean that the 26th section should apply to such a case. In my opinion, it is clear that railway companies are not bound to have a certificate of complete registration. The 23rd section gives a power to act under a provisional registration for twelve months, and thereby to do certain acts specified in that section, and also to perform such other acts as may be necessary for obtaining an act of parliament. It is evident, therefore, that when a railway company is provisionally registered, it may obtain an act of parliament without being completely registered. The 25th section provides, that even with respect to those companies which shall be completely registered, upon obtaining an act of incorporation, all the powers arising from provisional or complete registration, shall determine; and it further expressly excludes from the operation of that act any company which may, before complete registration, obtain an act of parliament. The plea is, therefore, no defence, and there must be judgment for the plaintiff.

*Alderson*, B. I am also of opinion that a railway company does not come within the 26th section of 7 & 8 Vict., c. 110. That section provides, that until such joint stock company—which, on looking back to the beginning of the section, means a company completely registered—shall have obtained a certificate of complete registration, it shall not be lawful for any person to dispose of shares. Then what is the meaning of the words "joint stock company" in that section? *Prima facie*, they mean every joint stock company mentioned in the act. We ought, then, to look to the

interpretation clause for the purpose of seeing what the legislature meant in using those words. That we find in the second section, which defines certain companies, and contains a proviso that, "except as *hereinafter* is specially provided," the act shall not extend to companies which cannot be carried into execution without an act of parliament. We, then, get thus far: that the act does apply to all companies provisionally registered, but not to companies such as railways, which require an act of parliament. Even in the proviso there is an exception—"except as hereinafter specially provided." The conclusion is, that the act applies to all joint stock companies, except railway companies, and others which require an act of parliament, and to these latter where it is specially provided by the act. Let us, then, see how we are to read the words "joint stock company" in the 26th section. We must read them thus: "a joint stock company, not being a railway company, and not specially mentioned in this clause." It is clear, therefore, that a railway company is not included in the term joint stock company, because such company is to be established by act of parliament, and is not specially mentioned in that section. Taking the interpretation clause and the 26th section together, that is the plain meaning of both, and there is nothing in the act inconsistent with such an interpretation. It seems to me that railway companies were never intended to be included within the 26th section. The legislature makes certain regulations, which apply indiscriminately to all companies until the 26th section. The subsequent provisions entirely exclude companies which cannot be carried into effect without an act of parliament.

*Platt, B.* I entirely concur. It is clear to me that the section only applies to such companies as require complete registration.

*Parks, B.* was not in court.

Judgment for plaintiff.

*Young v. Smith.* Hilary Term, Jan. 26, 1846.

#### Court of Bankruptcy.

##### PRACTICE AS TO COUNSEL OPPOSING CERTIFICATE, AND SUMMING UP EVIDENCE.

The bankrupt came up in this case for his certificate, and was opposed by Mr. Cook, as counsel on behalf of the assignees. The learned counsel opened his case against the bankrupt, and then examined the bankrupt himself, and several other witnesses, in support of his opening statement. He then proposed to address the commissioner upon the evidence as it thus stood.

Mr. Lawrence (for the bankrupt) objected to the counsel for the assignees addressing the court a second time, when no witnesses had been called, or were proposed to be called, on behalf of the bankrupt. He insisted that the practice of this court was analogous to that at *nisi prius*, where the plaintiff's counsel was not permitted to sum up his own evidence, but merely to open it, and examine his witnesses; and if the defendant's counsel declined to call

witnesses, the case concluded with his speech, and the plaintiff's counsel was not entitled to be further heard.

Mr. Commissioner Goulburn said, that the practice at *nisi prius* was, as stated, but it was thought by many experienced members of the profession, that the practice was not always conducive to the ends of justice; and that the practice which prevailed at the quarter sessions on appeals, where the counsel for the appellant, or respondent, was allowed to sum up the evidence of his own witnesses, was to be preferred. The jurisdiction of the commissioner, as to granting or refusing a bankrupt's certificate, was comparatively modern, and he should not take upon himself with confidence to assert, what the practice was, in reference to the matter in question, or to say whether any practice could be said to have been established. It was a matter of some importance, however, and he should adjourn the hearing of the case, until he had an opportunity of consulting some of his brother commissioners on the point.

At a subsequent period of the same day, Mr. Commissioner Goulburn stated, that he had an opportunity of consulting Commissioners Fonblanque and Holroyd, on the matter of practice already adverted to, and that both those learned commissioners agreed with him, that the practice ought to be, to allow the counsel opposing the granting of a certificate to address the court after he had concluded examining his witnesses, but always reserving to the bankrupt's advocate the advantage of being heard last. The case of a certificate did not present any analogy to a trial at *nisi prius*. It must often happen, as it did in fact in the present case, that the opposing counsel was driven to rely upon the evidence of the bankrupt himself. It was impossible for an opposing counsel to state with any certainty, what the bankrupt would say on examination; and for that, amongst other reasons, it would work great injustice, if the counsel was not allowed to address the court after the examination of his witnesses had terminated. If the bankrupt's advocate thought it expedient to call witnesses in reply, then it was convenient that the opposing counsel should reserve his observations, until those witnesses were also heard; but when no witness was called on behalf of the bankrupt, the counsel opposing the certificate should address the court, after the examination of his own witnesses had concluded.

Mr. Cook (for the assignees) then summed up the evidence against the certificate; and Mr. Lawrence was heard for the bankrupt.

The commissioner took time to consider his judgment on the merits of the case, and finally postponed the bankrupt's certificate.

*In re Hutchinson.* Friday, Jan. 16, 1846.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From Dec. 23rd, 1845, to Jan. 23rd, 1846, both inclusive, with dates when gazetted.

Brian, Thomas Cadwallader, Leeds. Jan. 2.  
Coldicott, Henry, Dudley, Worcester. Jan. 9.

Coots, Frederick John, St. Ives. Jan. 16.  
Duffett, Joseph Gibbs, Bristol. Dec. 30.  
Parker, Robert John, Selby, York. Jan. 9.  
Portmore, Charles Broadhurst, Leicester. Dec. 23.  
Rotham, Thomas, Wellington, Somerset. Dec. 23.  
Southern, Francis Richard, Walsall, Stafford. Jan. 20.

# **DISSOLUTIONS OF PROFESSIONAL PART- NERSHIPS.**

From 23<sup>rd</sup> Dec. 1845, to Jan. 23<sup>rd</sup>, 1846, both in-  
clusive, with dates when gazetted.

Bartlett, William Plater, and Richard Boswell  
Beddome, Attorneys and Solicitors, 27, Nicho-  
las Lane. Dec. 30.  
Bayley, Robert Riddell, Frederick Halsey Janson,  
and Philetus Richardson, Attorneys, Solicitors,  
and Conveyancers, Basinghall Street. Jan. 2.  
Boyet, William, and Henry Lucy, Kiddersmin-  
ster, Attorneys and Solicitors. Jan. 13.  
Brascomb, Walter, and Richard Mooze Benson,  
Aylesbury, and of Tring, Attorneys and Soli-  
citors. Jan. 13.  
Brooks, William Wycherley, John Lee, and Wil-  
liam Lee Brookes, Whitchurch, Salop, Attor-  
neys and Solicitors. Dec. 23.  
Bull, Henry William, and Charles Underwood, 25,  
Ely Place, Holborn, Attorneys, Solicitors, and  
Conveyancers. Jan. 2.  
Dodd, Charles, John Thomas Rowsell, Thomas  
Gruber, and Charles Arthur Dodd, Attorneys  
and Solicitors, so far as regards said Charles  
Arthur Dodd. Jan. 16.  
Everett, William, and John Wardroper, Attorneys  
and Solicitors, Epsom. Jan. 6.  
Greaves, Charles Lemon, and Thomas Crabbe, At-  
torneys and Solicitors, Uttoxeter, Stafford.  
Jan. 23.  
Pinniger, John, and Henry Seymour Westmacott,  
Attorneys and Solicitors, 28, John Street, Bed-  
ford Row. Jan. 20.  
Savery, Serwington, and John Thomas Savery,  
Modbury, Devon, Attorneys and Solicitors.  
Jan. 13.  
Sladden, William, and Robert Sankey, Canterbury,  
Attorneys and Solicitors. Jan. 2.  
Wilson, Richard, and Edward Wilson Scott, Ken-  
dall, Attorneys and Solicitors. Jan. 6.

## **BANKRUPTCIES SUPERSEDED.**

From 23<sup>rd</sup> Dec. 1845, to Jan. 23<sup>rd</sup>, 1846, both in-  
clusive, with dates when gazetted.

Lewis, John, Tipton, Stafford, Grocer. Jan. 20.  
Lewis, William, Barnsley, Yorkshire, Tobacconist.  
Jan. 13.

## **BANKRUPTS.**

From 23<sup>rd</sup> Dec. 1845, to 23<sup>rd</sup> Jan. 1846, both in-  
clusive, with dates when gazetted.

Abraham, George Augustus, Portsea, Victualler.  
Edwards, Off. Ass.; Corner & Co., Dean Street,  
Tooley Street. Dec. 26.  
Agnes, Robert, Kingston-upon-Hull, Woollen Drap-  
er. Kynaston, Off. Ass.; Hicks & Co., Gray's  
Inn; Galloway & Co., Hull; Payne & Co.,  
Leeds. Jan. 20.  
Alldritt, John, Rugeley, Stafford, Ropemaker.  
Whitmore, Off. Ass.; Motteram & Co., Bir-  
mingham; Parker & Co., Bedford Row. Jan. 16.  
Andrews, Henry John, Courtenay Street, Ply-  
mouth, Surgeon. Hirtzel, Off. Ass.; Edmunds,  
Plymouth; Stogdon, Exeter; Clowes & Co.,  
Temple. Jan. 9.

Arnold, John, Walsall, Stafford, Woollen Draper.  
Bittleston, Off. Ass.; Smith, Walsall; Smith,  
Temple Street, Birmingham. Jan. 23.  
Baker, Robert, Frost Lane, near Hiths, Stone  
Mason. Whitmore, Off. Ass.; Townshend, 17,  
Howland Street. Jan. 23.  
Baldwin, William, Stewart Arms, Norland Road,  
Notting Hill, Victualler. Whitmore, Off. Ass.;  
Dimmock & Co., Size Lane. Jan. 20.  
Banks, John Henry, Great Newport Street, Mid-  
dlessex, Engraver. Pennell, Off. Ass.; Wootton,  
Tokenhouse Yard. Jan. 20.  
Barber, Charles, Denham Springs, Brindle, near  
Chorley, Lancaster, Calico Printer. Post,  
Off. Ass.; Chisholme & Co., Lincoln's Inn  
Fields; Gibson, 4, St. James's Square, Man-  
chester. Jan. 2.  
Bartlett, Charles, Southampton, Merchant. Belcher,  
Off. Ass.; Tilden & Co., Coleman Street;  
Randall, Southampton. Jan. 13.  
Blackmore, Christopher, 10, Cork Street, Middle-  
sex, Tailor. Gross, Off. Ass.; Wilkinson, 44,  
Lincoln's Inn Fields. Jan. 20.  
Bretherick, James, Newlay, Bromley, Dyer. Young,  
Off. Ass.; Wiglesworth & Co., Gray's Inn;  
Richardson & Co., Leeds. Jan. 6.  
Broadbent, William, Delph, York, Cloth Merchant.  
Freeman, Off. Ass.; Sudlow & Co., Chancery  
Lane; Lee, Leeds. Jan. 9.  
Brooke, James, Gooderstone, Norfolk, Miller.  
Whitmore, Off. Ass.; Nettlefold, Vine Street  
House, Millbank; Walspole, Stoke Ferry, Nor-  
folk. Dec. 30.  
Brown, Samuel, Denton, Lancaster, Hat Manufac-  
turer. Hobson, Off. Ass.; Gregory & Co.,  
Bedford Row; Cooper, Manchester. Jan. 6.  
Brown Thomas, Leeds, Stock Broker. Hope, Off.  
Ass.; Williamson & Co., Gray's Inn; Cariss,  
Leeds. Jan. 16.  
Brown, Thomas, 3 and 4, Connaught Terrace,  
Edgware Road, Boot and Shoemaker. Graham,  
Off. Ass.; Buchanan, 8, Basinghall Street.  
Dec. 23.  
Brown, William, Atherton, Warwick, Ironmonger.  
Bittleston, Off. Ass.; Morgan, Waterloo Street,  
Birmingham; Chilton & Co., Chancery Lane.  
Dec. 23.  
Buchanan, William, 15, Old Jewry Chambers,  
Merchant. Bell, Off. Ass.; Stafford, Buck-  
ingham Street, Strand. Jan. 23.  
Buckley, William, Hollingrove, Saddleworth, York,  
Woollen Cloth Manufacturer. Kynaston, Off.  
Ass.; Spinks, Great James Street; Redfearn,  
Oldham; Middleton, Leeds. Jan. 16.  
Busnett, Alfred, 19, Bridge House Place, Newing-  
ton Causeway, Window Blind Maker. Pen-  
nell, Off. Ass.; Richardson, 36, Coleman  
Street. Jan. 16.  
Butterfield, Mary, and Thomas Archer, Royston,  
Hertford, Silk Mercers. Groom, Off. Ass.;  
Lawrance & Co., 32, Bucklebury. Jan. 9.  
Calway, Bartholomew, Tooley Street, Draper.  
Green, Off. Ass.; Reid & Co., 59, Friday  
Street. Jan. 23.  
Carlisle, John, late of 2, Mitre Court, Milk Street,  
Cheapside, but now of 1, Little Love Lane,  
Merchant. Groom, Off. Ass.; Bagster, 3, Size-  
lane. Jan. 23.  
Caswell, Thomas, and James Thomas Tindall,  
Northampton, Leather Sellers. Graham, Off.  
Ass.; Henman, Basing Lane. Jan. 16.  
Chatterton, Johanna, Pendleton, Lancaster, Victu-  
aller. Hobson, Off. Ass.; Johnson & Co., Tem-  
ple; Hitchcock & Co., Manchester. Dec. 23.  
Clarke, John James, Durdham, Down, Westbury-



- upon-Trym, Builder. *Hutton*, Off. Ass.; *Harmer*, Bristol. Jan. 6.
- Clark, John James, Bath Road, Hounslow, Builder *Pennell*, Off. Ass.; *Hensman*, 8, Basing Lane. Jan. 6.
- Clay, Thomas, Langroydbridge, Huddersfield, Merchant. *Freeman*, Off. Ass.; *Jaques & Co.*, Ely Place, Holborn; *Baitty & Co.*, Huddersfield. Jan. 16.
- Cleary, Joseph, Church Road, De Bouverie Square, Builder. *Alsager*, Off. Ass.; *Bishop*, Lincoln's Inn Fields. Jan. 23.
- Coe, James, 12, Size Lane, Money Scrivener. *Whitmore*, Off. Ass.; *Buchanan*, Basinghall Street. Jan. 2.
- Coker, John, Narford, Norfolk, Timber Merchant. *Bell*, Off. Ass.; *Dufaur*, South Square, Gray's Inn. *Pillans*, Swaffham, Norfolk. Jan. 23.
- Collinson, Joseph, Allerton, York, Worsted Spinner. *Young*, Off. Ass.; *Scargill*, Hatton Court, Threadneedle Street; *Dawson*, Bradford; *Harle*, Leeds. Dec. 23.
- Cousen, James and Lucy, Bankhouse, Bingley, York, Worsted Spinners. *Kynaston*, Off. Ass.; *Hawkins & Co.*, Boswell Court; *Wells*, Bradford; *Courtenay*, Leeds. Dec. 30.
- Cross, Samuel Massey, late of 2, Queen Street, Leeds, Corn Merchant. *Johnson*, Off. Ass.; *Lawrance & Co.*, Bucklersbury. Jan. 9.
- Crossland, Benjamin, Fennay Bridge, near Huddersfield, Head Knitter. *Young*, Off. Ass.; *Abbott*, Charlotte Street; *Atkinson & Co.*, Manchester. Jan. 23.
- Daft, Thomas Barnabas, Birmingham, Button Maker. *Bittleston*, Off. Ass.; *Chaplin*, Gray's Inn; *Spurrier & Co.*, Paradise Street, Birmingham. Jan. 9.
- Dean, Thomas, Goat Public House, Charles Street, Tottenham Court Road, Victualler. *Follett*, Off. Ass.; *Parnell & Co.*, New Broad Street. Jan. 20.
- Denbigh, John, Bradford, Wool Merchant. *Freeman*, Off. Ass.; *Walker*, Furnival's Inn; *Blackburn*, Leeds. Jan. 20.
- Denning, Isaac, 1, Titchbourne Street, St. James, Westminster, Watchmaker. *Whitmore*, Off. Ass.; *Brady*, Staple Inn. Jan. 16.
- Dixon, Frederick, 33, Long Lane, Becondsey, currier. *Follett*, Off. Ass.; *Fry*, Cheapside. Dec. 26.
- Edwards, Thomas, Llanisaintfraid, Montgomeryshire, Surgeon. *Casnooe*, Off. Ass.; *Dean & Co.*, Essex Street, Strand; *Minshall*, Oswestry; *Erans*, Liverpool. Jan. 13.
- Eedle, Edward, 82, Chancery Lane, Bookseller. *Pennell*, Off. Ass.; *Shaw*, 8, Furnival's Inn. Jan. 2.
- Evill, Thomas Ledyard, and Thomas Dowglass, Vigo Street, Middlesex, Cloth Manufacturers. *Alsager*, Off. Ass.; *Dickson & Co.*, Frederick Place, Old Jewry. Jan. 16.
- Freeman, James, Doctor in Medicine, Sherborne House, Cheltenham, Board and Lodging Housekeeper. *Miller*, Off. Ass.; *Hall & Co.*, Verulam Buildings, Gray's Inn. Jan. 23.
- Fricker, Henry, Star Hotel, Southampton, Innkeeper. *Turquand*, Off. Ass.; *Wilde & Co.*, College Hill. Jan. 20.
- Fry, Sarah Caroline, Princes Street, Margate, Stationer. *Turquand*, Off. Ass.; *Fisher*, Verulam Buildings, Gray's Inn. Dec. 23.
- Gascoyne, Robert, Little Bytham, near Stamford, Lincoln, Farmer. *Christie*, Off. Ass.; *Harding*, Moor-street, Birmingham. Jan. 9.
- Gay, William, Cheltenham, Builder. *Hutton*, Off. Ass.; *Gay*, Cheltenham. Jan. 6.
- Gillett, John, Bainton, Apperley Bridge, Eccleshill, Bradford, Dyer. *Young*, Off. Ass.; *Harley*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. Jan. 20.
- Glass, Francis, 7, Basinghall Street, Woollen Factor. *Green*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. Jan. 20.
- Goose, James Gilbert, Cheltenham, Innkeeper. *Miller*, Off. Ass.; *Hill*, Cheltenham. Jan. 13.
- Greenstock, George, Weston Super Mare, Ironmonger. *Acraman*, Off. Ass.; *Peters & Co.*, Bristol. Jan. 6.
- Griffin, William, 173, Cornhill, Silvermith. *Bell*, Off. Ass.; *Teague*, Crown Court, Cheapside. Jan. 20.
- Grosvenor, William, Eagle Foundry, and of Hanley, Stoke-upon-Trent, Ironfounder. *Whitmore*, Off. Ass.; *Bishop & Co.*, Shelton, in the Potteries. Jan. 6.
- Guy, Mary, and Henry Smith, Farringdon Street and Ludgate Hill, Linen Drapers. *Follett*, Off. Ass. *Reed & Co.*, Friday Street, Cheapside. Jan. 13.
- Hawley, Thomas Prentis, now or late of 25, Brunswick Parade, Barnaby Road, Islington, Cheesemonger. *Alsager*, Off. Ass.; *Fisher & Co.*, 62, Aldersgate Street. Jan. 20.
- Headington, Robert, of Liverpool and Bath, Lace-man. *Morgan*, Off. Ass.; *Chester & Co.*, Staple Inn; *Tyrer*, North John Street, Liverpool. Jan. 2.
- Heppell, Thomas, Newcastle-upon-Tyne, Timber Merchant. *Wakley*, Off. Ass.; *Harle*, 2, Butcher Bank, Newcastle-upon-Tyne; *Chisholme & Co.*, Lincoln's Inn Fields. Jan. 6.
- Herpert, Felix, Sherrard Street, Golden Square, Warehouseman. *Johnson*, Off. Ass.; *Ree*, Furnival's Inn. Dec. 23.
- Hippwood, Joseph Hutchinson, Cornhill, Merchant. *Groom*, Off. Ass.; *Morris & Co.*, Moorgate Street Chambers, City. Jan. 23.
- Hodgson, Thomas, Liverpool, Bookseller. *Bird*, Off. Ass.; *Vincent & Co.*, Temple; *Payne*, Liverpool. Jan. 23.
- Holder, Samuel Bateman, London, Merchant. *Bell*, Off. Ass.; *Gregory & Co.*, Bedford Row. Jan. 23.
- Hooper, Thomas Woodyatt, 5, Bathurst Street, Hyde Park Gardens, Chemist. *Whitmore*, Off. Ass.; *Church*, Bedford Row. Jan. 16.
- Hulse, Richard, 14, Little Tower Street, Chemist. *Alsager*, Off. Ass.; *Thompson & Co.*, Raymond Buildings. Jan. 6.
- Hutson, David, St. Albans, Agent. *Green*, Off. Ass.; *Weal & Co.*, Falcon Street, Fleet Street. Jan. 23.
- Hyde, Clarendon, Loughborough, Apothecary. *Whitmore*, Off. Ass.; *Ingleant*, Loughborough; *Foukes*, Birmingham. Dec. 23.
- Insall, William, Shipston-on-Stour, Auctioneer. *Whitmore*, Off. Ass.; *Findon*, jun., Shipston-on-Stour; *Smith*, Temple Street, Birmingham. Jan. 6.
- Jarvis, John & James Rowley, Nutsford Vale Print Works, Newton, Manchester, Silk Manufacturers. *Hobson*, Off. Ass.; *Abbott*, Charlotte Street, Bedford Square; *Atkinson & Co.*, Manchester. Jan. 20.
- Jones, Benjamin, 34, City Road, Draper. *Groom*, Off. Ass.; *Soles & Co.*, Aldermanbury. Dec. 30.
- Kerr, Frederick, Harley Street, St. Marylebone, Bookseller. *Turquand*, Off. Ass.; *Thrupp*, Winchester Buildings. Jan. 16.
- Kilpatrick, Robert, & James Smith, Liverpool, Rope Manufacturers. *Turner*, Off. Ass.

- Gregory & Co., Bedford Row; Duncan & Co., Liverpool. Jan. 20.
- Knight, Thomas, and Michael, Thomas, 9, 10, & 11, Northumberland Passage, St. Peter & St. Paul, Bath, Furniture Brokers. Miller, Off. Ass.; Gainsworth & Co., Cook's Court, Lincoln's Inn; Graves & Co., Bath. Jan. 23.
- Leakshear, Joseph, Seymour Row, Little Chelsea, Surgeon. Johnson, Off. Ass.; Thompson, Bucklersbury. Dec. 25.
- Lawrence, William, Sheffield, Stove & Fender Manufacturer. Hope, Off. Ass.; Parkes & Co., Bedford Row; Brookfield & Co., Sheffield; Blackburn, Leeds. Jan. 16.
- LeJeune, Henry, St. Albans, Malster. Bell, Off. Ass.; Lawrence & Co., Bucklersbury. Jan. 2.
- Leporemand, Victoire Susanne Urulle, 153, Regent Street, Milliner. Graham, Off. Ass.; Mardon & Co., Christchurch Chambers, Newgate Street. Jan. 20.
- Lery, Henry, Plymouth, Tobacconist. Hirtzel, Off. Ass.; Surr & Co., Lombard Street; Lockyer & Co., Plymouth; Moore, Exeter. Jan. 13.
- Linnit, John, Argyll Place, Regent Street, Goldsmith. Edwards, Off. Ass.; Boulton, 21 A, Northampton Square. Jan. 23.
- Lucas, Daniel William, 34, Mark Lane, Hemp and Flax Dealer. Edwards, Off. Ass.; Bolton & Co., 25, Austin Friars. Jan. 2.
- Maclean, Moria, Basinghall Street, and of Stroud, Cloth Factor. Groom, Off. Ass.; Vallance, & Co., Old Jewry Chambers; Croom & Co., Stroud. Jan. 13.
- Marks, David, 55 & 25, Houndsditch, Pen & Quill Manufacturer. Johnson, Off. Ass.; Swan, Doctors' Commons. Jan. 20.
- Martin, James, Wood Street, Cheapside, Fringe Manufacturer. Graham, Off. Ass.; Reed, Friday Street, Cheapside. Jan. 9.
- Maud, William, Liverpool, Victualler. Cazenove, Off. Ass.; Rogerson, 50, Lincoln's-inn-fields; Davies, Liverpool. Jan. 16.
- Middleton, George, Nottingham, Wine Merchant. Christie, Off. Ass.; Brown, Nottingham; Smith, Birmingham. Jan. 23.
- Miller, James, 177, High Street, Southampton, Cordwainer. Groom, Off. Ass.; Overton & Co., 25, Old Jewry. Dec. 23.
- More, Richard, & Benjamin William Blake, Norwich, Coal Merchants. Turquand, Off. Ass.; Bailey, Norwich; Jay, Bucklersbury. Dec. 30.
- Muggeridge, Henry, St. John Street, Smithfield, Wire Drawer. Belcher, Off. Ass.; Low, Chancery Lane. Jan. 13.
- Nash, Thomas, jun., Stourbridge, Worcester, Builder. Bittleston, Off. Ass.; Hunt & Co., Stourbridge; Motteram & Co., Bennet's Hill, Birmingham. Jan. 6.
- Neale, George Seagrave, Royal Oak Inn, Portsea, Innkeeper. Pennell, Off. Ass.; Low, Chancery Lane; Low, Portsea. Jan. 2.
- Orchard, William, Portsea, Builder. Green, Off. Ass.; Low, Chancery Lane; Low & Co., Portsea. Jan. 16.
- Osborn, George, High Street, Exeter, Whip & Fishing Tackle Maker. Hernaman, Off. Ass.; Stodgdon, Exeter; Keddis & Co., Lime Street. Jan. 9.
- Owen, Peter, Liverpool, Miller. Morgan, Off. Ass.; Sharpe & Co., Bedford Row; Lewndes & Co., Liverpool. Jan. 16.
- Paris, Richard, Ragland, Monmouth, Innkeeper. Hutton, Off. Ass.; Brisley, Pancras Lane, London. Jan. 20.
- Phillips, Philip, Birmingham, Steel Pen Maker, Christie, Off. Ass.; Jabett, 40, Bennett's Hill, Birmingham. Dec. 25.
- Phillips, Thomas, Shrewsbury, Hop Merchant. Valpy, Off. Ass.; Bartlett, Edmund Street, Birmingham. Dec. 30.
- Pickles, Robert, Barnsley, Linen Manufacturer. Freeman, Off. Ass.; Jones & Co., Bedford Row; Brown, Nottingham. Jan. 9.
- Pickles, John, Preston, Cotton Spinner. Fraser, Off. Ass.; Gregory & Co., Bedford Row, Catterall, Preston. Jan. 9.
- Pierce, Thomas Carey Willard, Stevenson's Square, Manchester, Trader. Hobson, Off. Ass.; Abbott, Charlotte Street, Bedford Square. Atkinson & Co., Manchester. Jan. 2.
- Pierce, Thomas Carey Willard, & Gilson Homan, Manchester, Merchants. Hobson, Off. Ass.; Abbott, Charlotte Street, Bedford Square. Atkinson & Co., Manchester. Jan. 13.
- Radbone, John, Alcester, Warwick, Broker. Valpy, Off. Ass.; Jones, Alcester. Jan. 20.
- Rand, Joseph Howard, 29, Westminster Bridge Road, Dealer in Glass. Green, Off. Ass.; Buchanan, 8, Basinghall Street. Dec. 23.
- Reid, James, Newcastle-upon-Tyne, Ship Broker. Baker, Off. Ass.; Plumtree, Temple; Cram, Newcastle-upon-Tyne. Jan. 13.
- Ricketts, John, High Street, Gosport, Grocer. Turquand, Off. Ass.; Bell & Co., Bow Church, yard. Jan. 20.
- Roberts, John, & Hugh Hughes, Deansgate, Manchester, Linen Drapers. Hobson, Off. Ass.; Reed & Co., Friday Street, Cheapside; Sale & Co., Manchester. Jan. 23.
- Robinson, Francis, 4, Prince's Street, Chelsea, Cowkeeper. Belcher, Off. Ass.; Wansey, 3, Moorgate Street. Dec. 26.
- Rolph, Elizabeth & Thomas, Shepherd's Court, Upper Brook Street, Grosvenor Square, Builders. Bell, Off. Ass.; Huson, 7, Ironmonger Lane. Dec. 23.
- Ross, Sir John, knight, late of 34, Gracechurch Street, Banker. Belcher, Off. Ass.; Buchanan, Basinghall Street. Jan. 20.
- Schultz, George Edward, & Henry Ward Carr, Liverpool, Stock & Share Brokers. Turner, Off. Ass.; Cotterill, Throgmorton Street; Fletcher & Co., North John Street, Liverpool. Jan. 6.
- Sier, John, Cheltenham, Baker. Miller, Off. Ass.; Oliver & Co., Moorgate Street. Stiles, Cheltenham. Dec. 23.
- Simkin, George, West Street, Faversham, Tailor. Alsager, Off. Ass.; Wood & Co., 78, Dean Street, Soho. Jan. 6.
- Simpson, Joseph, Leeds, Woolstapler. Kynaston, Off. Ass.; Wiglesworth & Co., Gray's Inn; Richardson & Co., Leeds. Jan. 6.
- Smith, Esther, Southwell, Notts, Innkeeper. Christie, Off. Ass.; Shilton & Co., Nottingham. Dec. 23.
- Smith, George, Manchester, Bill Broker. Pott, Off. Ass.; Fox, 40, Finsbury Circus; Worthington & Co., Manchester. Dec. 23.

Stafford, Richard, 1, Warrford Court, London, Share Agent. *Green*, Off. Ass.; *Wootton*, Tokenhouse Yard. Jan. 16.

Stanton, Daniel, 2, Redcliffe Street, 10, Union Street, & 60, Castle Street, Bristol, Tea Dealer. *Acraman*, Off. Ass.; *Clark*, & Co., Lincoln's Inn Fields; *Savery* & Co., Bristol. Jan. 9.

Stevens, John, Clement's Inn, Builder. *Edwards*, Off. Ass.; *Ashurst*, Cheapside. Jan. 13.

Streeter, Edward, Bristol, Builder. *Acraman*, Off. Ass.; *Hopkins*, Bristol. Dec. 26.

Toulmin, Charles William, 6, South Island Place, Clapham Road, Livery Stable Keeper. *Alager*, Off. Ass.; *Buchanan*, Basinghall Street. Dec. 26.

Tuddenham, John, 45, Pickering Place, Bayswater, Builder. *Whitmore*, Off. Ass.; *Dolman*, Clifford's Inn. Jan. 23.

Turner, John, 24, Brooke Street, Holborn, Dealer in Printing Materials. *Turquand*, Off. Ass.; *Willoughby* & Co., Clifford's Inn. Jan. 23.

Urwinn, William, Watford, Hertford, Fellmonger. *Johnson*, Off. Ass.; *Sanger*, Essex Court, Temple. Jan. 9.

Wailles, William, Newcastle-upon-Tyne, Grocer. *Baker*, Off. Ass.; *Chater* & Co., Newcastle-upon-Tyne. *Scaife*, Newcastle; *Bennett* & Co., 9, Scot's Yard, Cannon Street. Dec. 26.

Walker, Robert Edwards, Liverpool, Ship Broker. *Bird*, Off. Ass.; *Gregory* & Co., Bedford Row; *Green*, Brunswick Buildings, Liverpool. Jan. 16.

Ward, William, Manchester, Auctioneer. *Alager*, Off. Ass.; *Newton* & Co., Wardrobe Place, Doctors' Commons. Jan. 20.

Wilders, Thomas, late of Bourton-upon-Trent, now of 92, Sloane Street, Brewer. *Christie*, Off. Ass.; *Everes* & Co., Hatton Garden. Jan. 13.

Wilks, William, Leeds, Builder. *Hope*, Off. Ass.; *Wiglesworth* & Co., Gray's Inn. *Bond*, Leeds. Jan. 9.

Wilkinson John, Haslingden, Lancashire, Joiner. *Hobson*, Off. Ass.; *Humphreys* & Co., Chancery Lane; *Heiherington* & Co., Liverpool. Jan. 13.

Williams, Thomas, Bell Inn, Thomas Street, Bristol, Victualler. *Hutton*, Off. Ass.; *Hopkins*, Bristol. Jan. 16.

Williamson, Curtis, 7, Great Portland Street, St. Marylebone, Wine Merchant. *Edwards*, Off. Ass.; *Bristow* & Co., 2 Bond Court, Walbrook. Dec. 26.

Wingfield, William, Masbrough, Rotherham, Brewer. *Young*, Off. Ass.; *Hudson*, Bucklersbury; *Robinson*, Rotherham; *Bond*, Leeds. Dec. 23.

Winston, Thomas, late of 3, Copthall Buildings, Merchant. *Belcher*, Off. Ass.; *Crowder* & Co., 57, Coleman Street. Dec. 23.

Wood, Benjamin, jun., Leeds, Wine Merchant, *Kynaston*, Off. Ass.; *Few* & Co., 2, Henrietta Street, Covent Garden; *Upton* & Co., Leeds. Dec. 30.

Worsam, George Jarvis, 25, Great Mitchell Street, Old Street, St. Luke's, Engineer. *Green*, Off. Ass.; *Buchanan*, Basinghall Street. Dec. 30.

Wren, Thomas, Preston, Ship Broker. *Fraser*, Off. Ass.; *Gregory* & Co., Bedford Row. Jan. 9.

Wynne, Daniel Colwyn, Carnarvon, Innkeeper. *Morgan*, Off. Ass.; *Cor* & Co., Lincoln's Inn Fields; *Oldfield*, Holywell; *Jones*, Liver Court, Liverpool. Jan. 20.

## NOTES OF THE WEEK.

## SALE OF RAILWAY SCRIP:

THE Court of Exchequer, on the 26th inst., in the case of *Young v. Smith*, decided that the 26th section of the 7 & 8 Vict. c. 110, is not applicable to railway companies, and consequently, that the sale of scrip certificates after provisional registration, is valid. See p. 295, ante.

## NEW ORDERS IN CHANCERY, OF MAY, 1845.

THE Lord Chancellor has decided, that application for special leave to amend, under orders 67, 68, & 69, of 1845, must, in the first instance, be made to the master; and the requisite affidavits, wherein the plaintiff is unable to join, must be made by the solicitor, and not by the clerk alone who conducts the suit.

The report which could not conveniently be inserted in the present, will follow in the next number.

## LEGAL OBITUARY.

1845. Dec. 22.—John Cressy Hall, barrister-at-law, of Grange House, Alfreton, aged 82. He was called to the bar by the Society of Gray's Inn, on the 27th May, 1829, and was formerly a Commissioner of Bankrupts for Derbyshire.

Dec. 19.—Jacob Phillips, barrister-at-law, aged 68. He was called to the bar by the Society of the Inner Temple, on the 6th July, 1821, and practised as a conveyancer.

Dec. 28.—Robert Falcon, formerly of Elm Court, Temple, solicitor, aged 73.

Dec. 2.—At St. Vincent's, Charles Addis, jun., Esq., barrister-at-law.

1846. Jan. 6.—Archibald Cameron, Esq., of Worcester, solicitor, aged 64.

Jan. 10.—William Lucas, of Portsea, solicitor.

Jan. 23.—Thomas Rainsford Ensor, of Gray's Inn, solicitor, aged 59.

Jan. 25.—Geo. Johnson of the Temple.

Jan. 27.—Jos. Bicknell of Staple Inn, aged 85.

## THE EDITOR'S LETTER BOX.

THE suggestions regarding the recent announcement of lectures and examinations at the Middle Temple, shall be considered.

The preliminary question that an articulated clerk is required to answer, "Have you during the period of your articles been engaged or concerned in any profession, business, or employment, other than your professional employment as clerk," &c., no doubt relates to such employments as are of a permanent character, and occupy part of the clerk's time during business hours. If a clerk has occupied himself in the evening, in matters not derogatory to professional persons, we presume there can be no necessity to enumerate them in reply to the above question.

The Examination Questions are unavoidably deferred till next week.

# The Legal Observer.

SATURDAY, FEBRUARY 7, 1846.

—“Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.”

HORAT.

## NEW TRIALS AND APPEALS IN CRIMINAL CASES.

We have already noticed several parts of the 8th Report of the Commissioners on Criminal Law, and proceed now to direct the attention of our readers to the proposition for granting new trials and allowing appeals in criminal cases, in lieu of the present method of a petition to the Crown for mercy. The 8th chapter of this report treats “of the proceedings which may be essential after conviction, for the purpose of correcting any mistake in law or fact after a verdict has been pronounced.” The commissioners say,—

“The question whether a motion for a new trial ought to be entertained is one of high importance to the due administration of criminal justice. It involves two main points,—1st, whether such a course is material for the purpose of distinguishing between guilt and innocence, and if so, [2nd] whether any reason warrants the rejection of such a test. If any doubt should exist on the first question, it is one which would most properly be decided by experience; on this point, however, there is no room for doubt, actual experience, not only in respect of civil, but even of criminal proceedings, where the test is allowed to operate, proves its importance. In truth, so long as human judgment is fallible, it must be necessary to use means for the correction of error and mistake. It may be said that this cannot be done without delay and expense. It cannot, however, be doubted that deliberate justice, although necessarily attended with more or less of delay, is preferable to the injustice incident to improvident haste, and necessarily resulting from the neglect of reasonable means for the exclusion of error.”

The expenditure of labour and cost in criminal investigations can scarcely be placed in competition with the evils which must inevitably result from want of due caution. The question resolves itself

mainly into this, whether the cost of correction can fairly be placed in competition with the evils likely to result from the want of correction. We apprehend, say the commissioners, that the right even of the legislature to inflict capital punishment rests on grounds of strict and cogent necessity, and that to go beyond that limit involves a transgression in *foro cali* which is criminal in the legislator himself. The divine prohibition plainly extends to every unwarranted destruction of human life—there is no authority to control or limit it beyond that which may be inferred from strict necessity; no hypothesis which can be framed as the origin of civil society, and the duty of obedience to its laws, can warrant the conclusion that the legislator has either expressly or impliedly the power to direct capital punishments on any other ground.

“If this principle be applicable to the infliction of capital punishment, where, from the nature of the offence, the infliction of a less penalty would be equally beneficial to society, it is, *a fortiori*, applicable if reasonable and practicable means be not provided for ascertaining, previously to the infliction of capital punishment, that the accused is really guilty of a crime to which such a penalty is annexed by the law. Errors of the former kind apply only to such as are actual delinquents, those of the latter involve the destruction of the innocent.

“The observations thus applicable to capital punishment are obviously applicable also, although in an inferior degree, to the minor penalties of transportation, or loss of liberty, or even property; the right to inflict the latter as well as the former rests upon the principle of necessity for the prevention of wrong.”

The law of England is at present very defective as regards the means afforded for the correction of errors in criminal proceedings, and especially such as are fre-

quently and indeed are almost necessarily incident to the trial by jury.

"In this respect, indeed, the law is inconsistent in entertaining the motion for a new trial in some instances and denying it in others, without any adequate reason for the distinction, and is thus faulty either in denying a new trial where it would be consistent with justice to grant one, or in granting a new trial where it ought properly to be withheld. The instances in which a new trial is grantable are confined to those where the prosecution is for a misdemeanor only, and is pending in the Court of Queen's Bench. We cannot but observe that the distinction thus made, in the first instance, between indictments for felony and those for misdemeanor pending in the Court of Queen's Bench is one not warranted by any intelligible principle; it would indeed seem to be more reasonable that as the penalties for felony are usually more severe than those which attach to a mere misdemeanor, larger means for the correction of error should be afforded in the former case than in the latter. The distinction between cases of misdemeanor pending in the Court of Queen's Bench and those pending in other criminal courts seems also to be destitute of any sound principle. It may perhaps, as to prosecutions removed from inferior courts into the Court of Queen's Bench, be said, that it is to be presumed that they are of more difficult investigation, and therefore that more ample means ought to be allowed for accurate inquiry and for the correction of errors. This may occasionally be so, but the presumption cannot possibly warrant so wide a distinction as that which is made in practice; the difficulties which give rise to the application for a new trial are frequently of a nature not to be foreseen, and often depend on the conduct of witnesses, or of the jury, or the direction of the judge or presiding magistrate, and not at all on the nature of the cause itself. Besides, as a defendant in a cause depending in the higher court has always the benefit of being tried before one of the judges of the superior courts, the proceedings are less likely to stand in need of correction than they are when the trial is had before an ordinary magistrate."

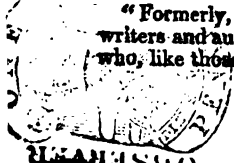
"It is also to be observed that the distinction has been sometimes received with jealousy, as operating in favour of such as can well afford to remove the indictment into the higher court by writ of *certiorari*."

The commissioners then refer to the ancient law, for the purpose of showing that the present distinction in regard to cases removable by *certiorari* is not warranted by any principle recognised by that law, but is in truth the casual result of a change of circumstances.

"Formerly, as appears from the ancient text writers and authorities, jurors were not persons who, like those of the present day, decided as

judges of the facts upon the testimony of others: they were themselves the very eye and ear witnesses of the facts, or were persons likely, from proximity to the place in question, to possess the best means of judging accurately, and they determined according to their own actual or presumed knowledge. There could therefore be no new trial on the ground that the testimony on which the verdict was founded was false or insufficient to warrant the verdict. In doubtful cases recourse was had to the trial by ordeal, or to a process of compurgation, and it was not until after the abandonment of the former superstitious modes of trial that juries began to exercise the important duty of deciding upon evidence. The great intrinsic defects incident to such a tribunal, and the inconvenience and injustice experienced for want of due means of correction at last occasioned a most important change in the law as regarded civil causes in admitting motions for new trials—a great improvement, but which was not extended to criminal proceedings beyond the narrow limits to which we have already alluded. It is notorious that at the present day the hearing of motions for new trials in civil causes is one of the most important and frequent occupations of the common law courts, and it cannot be doubted that without the means of correcting errors and mistakes thus afforded, the trial by jury would be regarded as unsatisfactory and unsafe.

"A new trial in civil proceedings is now allowed on the plain and simple ground that the practice is essential to justice, for the purpose of correcting errors and miscarriages in its administration, which cannot be excluded, but which require remedy. These, however, are not peculiar to civil proceedings; some of them are even more likely to occur in criminal than in civil proceedings. Questions of civil right are for the most part dependent on facts, the effect rather than the existence of which is disputed. Criminal questions, on the contrary, frequently depend on transactions of a hidden and secret nature, the truth of which it is oftentimes difficult to unravel, and, in consequence, resort must often be had to a chain of presumptive or circumstantial evidence. Looking therefore to the nature of the inquiry, it is quite as likely that error or mistake should occur in the investigation of a criminal charge as on that of a mere civil claim. As regards the consequences of error in the one case and the other, it cannot be denied that a failure of justice in a criminal case, where it may concern not only property, liberty, but even life itself, is of much more serious importance than in civil cases, where a mere question of property is concerned. These positions and their consequences are too obvious to be dwelt upon; yet, admitting them to be true, the conclusion must necessarily be that the precautions necessary to exclude error in the one case are, *à fortiori*, necessary in the other. If, with a view to exclude the possibility of injustice, a man is to be allowed the benefit of a new trial where property to the amount of 20*l.* is at stake; it is



hard to deny him protection to the same extent where his life is in jeopardy. If the question whether a pauper be legally settled in parish A. or parish B. is not to be determined without power of appeal to the Court of Queen's Bench, it is harsh to condemn him to be transported for life to a penal settlement without power of appeal. The law in this respect is at variance with itself, and several evil consequences naturally result."

"Great injustice is often done to an innocent party who but for the technical rule would entitle himself to a new trial; for it cannot be doubted that cases not unfrequently occur when the convict is either altogether innocent, or not guilty of the aggravated offence charged."

The report then proceeds to some instances in which innocent persons have unfortunately been convicted, and the following extracts are made from the evidence on this subject:—

"Sir F. Pollock, in answer to the question of the commissioners — 'There is another great difference between felonies and misdemeanors with respect to the granting of a new trial,—it can be had where an indictment is before the Court of King's Bench, but none can be had in case of felony; do you conceive that that difference is one which requires any alteration?' said, 'The question that is now proposed to me recalls some circumstances which occurred a few years ago, when Mr. Wilde, of College-hill, an attorney, was one of the sheriffs of London; and I will endeavour to give to the commissioners (I am afraid but imperfectly) some of the circumstances which occurred during his shrievalty, and I wish that I had been at all aware that an opportunity would have occurred of adverting to these circumstances, as I would have taken care to have been provided with more distinct information; but I think the commissioners will probably feel it their duty, when I have stated as far as I know the facts to which I advert, to endeavour to procure the attendance of Mr. Wilde himself, and to obtain from him more minutely the cases to which I refer. I think he was sheriff during part of a year only, having been elected upon the death of one of the sheriffs chosen in September, 1827. I am not quite certain I am correct as to the date, but am right within a year. During the seven months he was in office, by his exertions he saved several men from public execution, I think as many as seven, but I am certain as to five. I had frequent communications with him upon those cases while they proceeded. My impression is, that several out of those cases were cases of perfect and entire innocence, and that the others were cases of innocence with reference to the capital part of the charge. The then Secretary of State, Sir Robert Peel, paid great attention to every application to mercy, and having satisfied himself in each case that the prepotative of the Crown ought to interfere, the lives of every one of the

individuals were spared. It is impossible to speak in too high terms of the zeal, humanity, unsparring labour and expense which Mr. Wilde bestowed upon those occasions, but the result satisfied me that the parties were in several instances guiltless of any crime, and in all the cases, were such as did not justify capital punishment; and Sir Robert Peel, after much labour in the investigation, was of the same opinion. It has always, since this occurred, been impressed upon my mind as a very appalling fact, that in one year so many persons were saved from public execution, for which I believe most, if not all of them, had been actually ordered; and though, I believe, undoubtedly, the sheriffs of London are in general conspicuous for an active, humane, and correct discharge of their duty, they have not all, and cannot have, the means of bringing to the investigation of such subjects the same facility and the same unsparring exertion that Mr. Wilde afforded while he was sheriff; and I am persuaded, and have been ever since I know those facts, that unless the practical difficulties are insuperable, which I do not apprehend would be the case, some legal constitutional mode ought to be adopted by which errors and mistakes, from whatever source arising, should be corrected in criminal trials, as well as they may now be in civil cases.' In consequence of Sir F. Pollock's suggestion, Mr. Wilde was examined, and stated that within the space of nine months, during which he was one of the sheriffs of London, no fewer than six persons who had been capitally convicted at the Old Bailey, and left for execution, were saved from death in consequence of investigation showing that they had been improperly convicted.\* Being asked, 'Is it your belief that many innocent persons do suffer from the want of a proper mode of inquiry?' he answered, 'I think many innocent persons have suffered—the term innocent I use with reference to the offence with which they are charged.' In answer to the question, 'From your own personal experience on the subject, and your general observations and knowledge do you think that it would be desirable to provide some more certain means for inquiry in cases of doubt after conviction?' he said, 'I think it indispensably called for. From the want of it the sheriffs and the officers of the prison, who of course are the only persons in constant communication with the prisoners, are often placed in a most painful situation, in having to judge how far, consistently with the discharge of their own duties, they ought to interfere.'

The commissioners further observe that

"Where a party has been convicted, improper evidence having been received against him, or legal evidence for him having been rejected

\* The circumstances of these cases are detailed by Mr. Wilde in his evidence, see Appendix to the Second Report of the Commissioners on Criminal Law, p. 99.

on the trial, injustice is done to him if the objection be disregarded, and injustice is done to society in allowing the objection to prevail to his actual and final discharge. To take a middle course in such a case, in mitigating the sentence on account of the doubt, is not only unjust, but highly absurd: he cannot have been guilty of a fraction of the offence, and therefore ought not to be subjected to a fraction of the punishment. A wrong is done, either to the accused in punishing him at all, or to the public in not punishing him according to his desert. Where the verdict of guilty is fairly warranted by proper evidence, but a doubt arises as to sanity, identity, or other material fact from collateral sources, difficulties result which cannot well be removed but by a new trial. The execution of the sentence would, though legal, be barbarous; to exercise the royal prerogative, without a searching investigation, would be unadvisable and impolitic. The instituting a strict inquiry would be in effect to grant a second trial; it would at least admit the necessity for one, and it would be made under circumstances the most disadvantageous to the discovery of the truth, without any of the powers and sanctions which in courts of justice are provided against fraud and imposition."

There is no doubt that government is ever ready to correct any error in criminal cases of an important kind, and that often convicted but innocent persons have been rescued from death or other severe punishment; but the inquiries on such occasions are conducted in secrecy and are justly subject to suspicions. The commissioners say, that the difficulties in the way of a prisoner obtaining a revision of his sentence after an unjust conviction are forcibly stated by Mr. Wilde in his evidence:<sup>b</sup>

"Being asked his opinion whether a prisoner had any sufficient means of procuring a revision of his case, he says:—'I do not consider that at present there are any sufficient means. The prisoner convicted in London and Middlesex may present a petition to the King in council, through the Home Secretary, which may of course state all the grounds, either of fact or in law, upon which the conviction ought not to have taken place, and craving the mercy of the Crown; or if tried at the assizes, may present a similar petition to the judge who tries him. This cannot be considered as in the nature of an appeal. From the state of destitution and ignorance in which prisoners generally are, and from want of a court with proper officers, the prisoners have not the means of bringing their cases in a proper state for reconsideration; and I think I may state that the prisoners generally consider that the only benefit they can derive from a petition so presented is from the mercy

of the Crown. Practically speaking, unless sheriffs, magistrates, and governors of prisons, and their officers, or charitable individuals, exert themselves in collecting and authenticating the grounds upon which a prisoner seeks for the relief, and subsequently take the trouble of communicating with the Secretary of State, the prisoners have little or no chance of a successful result to their application. This applies as well to those who are innocent as to those who merely seek for a mitigation of the sentence."

Mr. Wilde is then asked—

"'From the experience you have personally had, do you think it just and proper, or even necessary, that there should be some regular and settled mode by which prisoners, even after conviction, may obtain a revision of their case in particular instances?'—and he says, 'I am perfectly satisfied that many persons have suffered punishments where they have been positively innocent of the crime with which they were charged, and which, if there had been any court of appeal, with, of course, proper officers appointed, to whom the parties accused might have stated their grounds of appeal, there would have been a reversal of their conviction or sentence.' Again it is asked—

"'In your judgment, are the generality of prisoners aware of the means by which a revision may be occasionally obtained by an application to the Secretary of State?'—'I have no doubt that it is known in prison conversation that there is what is called a revision of the case, (that is, in capital felonies, but not otherwise,) but it is only done in the form of a petition, and is therefore rather an appeal to mercy, than the assertion of a right, and it is attended with considerable difficulties to the prisoners, from their poverty and destitution.'

"'Have you had opportunities, from filling the offices of sheriff and undersheriff, of knowing what the situation is of persons who have been convicted, and the difficulty of obtaining a revision of their case?'—'I have had that opportunity; for, during the time I was in office, both as sheriff and undersheriff, I never failed attending in court at the trial of prisoners at the sessions at the Old Bailey, and I was constantly through the prison of Newgate.'

"'Now, from the experience you have had, in your judgment, do you think it essential to justice that revisions should occasionally take place after conviction?'—'Yes, I think, in all important cases to the prisoners where, if injustice is done, it would be more serious than in minor offences, although, upon principle, justice should of course be equal to all.'"

The adoption of the recommendation of the commissioners on this important subject could not fail to meet the approval of all classes, as well the profession as the public. The expense of conducting new trials or appeals whilst it fell on the county rates, might have formed a serious objection to the proposal. But the change proposed by the Premier to be effected in

<sup>b</sup> See Appendix to their Second Report, p. 99.

the administration of criminal justice will remove this difficulty. Most properly this expense is hereafter to be borne by the consolidated fund. There can certainly be no reason why a prosecution for murder or robbery should be conducted at the expense of the district in which the offence has been committed. An inhabitant has lost his life or property: why should his friends or neighbours pay the expense of finding out and punishing the offender, rather than the community in general, which is equally interested in putting down such offences? The probability, indeed, is, that the offender came from some other part of the kingdom.

Now, this intended improvement in our system of administering criminal justice will come very opportunely in aid of the establishment of a new jurisdiction, to be conferred on one of the existing courts or some new tribunal. At an early period, therefore, we trust, a proper measure for carrying the views of the commissioners into effect will be introduced and carried.

## LECTURES ON THE REAL PROPERTY AMENDMENT ACT.

MR. CAYLEY SHADWELL delivered his 8th Lecture on the Real Property Amendment Act, 8 & 9 Vict. c. 100, on the 26th January. He observed, that previous to the passing of the English and Irish acts, for abolishing Fines and Recoveries, contingent and executory estates and interests might in both countries be conveyed by fine.<sup>a</sup> It appeared that they might also have been passed by deeds operating by way of estoppel, but if such deeds operated by way of estoppel only, though they bound those who might be considered as parties or privies to the deed, they did not, on the contingent or executory interest coming into possession, give strangers purchasing a title good against all the world.

Whether deeds professing to pass these contingent or executory estates, operated not only by way of estoppel but also by way of conveyance, was a debatable point. Some cases are to be cited to show, that deeds of this kind had that double operation working by estoppel until the contingency happened, and then when

the contingency happened operating as a conveyance.<sup>b</sup>

The point was, however, at best a doubtful one, and the result therefore in practice was, that when a contingent or executory interest was to be conveyed to a purchaser, the conveyance was always required to be made by way of fine. When the English Fines and Recoveries Act, 3 & 4 W. 4, c. 74, was passed, the general scheme of the act was, not to give to the deed to be executed according to the substituted forms the same effect a fine or recovery would previously have had, but first to put an end to fines and recoveries altogether, and then by so many distinct positive enactments to give to the deed to be executed according to the prescribed forms so many of the qualities formerly attributed to fines or recoveries as it was judged proper to revive. The deed under the act had no efficacy except that which the act expressly gave it. In dealing with contingent and executory interests, which it was one of the qualities of the old fine to convey, the *English* act makes a singular distinction. By its 15th section it authorises the conveyance of contingent or executory estates tail, expressly enabling "every actual tenant in tail, whether in possession, remainder, *contingency* or *otherwise*, to dispose of for an estate in fee simple or any less estate, the lands entailed," but with respect to contingent or executory interests other than estates tail, contingent or executory estates for life or in fee simple, it makes no provision for their conveyance at all. It destroys the old mode of conveying these interests by fine, and substitutes nothing in its place. This was certainly an omission in the *English* act; it was not, however, an omission of carelessness or oversight, for, as the very learned framer of the act had often told the lecturer, he had the necessary clauses drawn or at least sketched, but that parliament wishing that the act should be passed by a particular time, and the subject being one of particular delicacy and difficulty, and requiring mature deliberation, he thought that upon the whole it was better that it should be reserved for future enactment, than that the clauses should be inserted without that consideration, which he conscientiously felt that they required. This was the way the case stood in the *English* act.

In the Irish act, which passed a year after the English one, this deficiency was supplied, and in a manner that had been considered to be satisfactory.

As to contingent or executory estates tail, the provision is the same as that of the English. As to other contingent or executory interests, the provision was as follows:—"That from and after the 31st day of October 1834, it shall be lawful for any person, either before or after he shall become entitled in any manner, (except

<sup>a</sup> Fearn's Contingent Remainders, 365, 551; *Doe dem. Christmas v. Oliver*, 10 Bar. & Cres. 181, S. C.; 5 Man & Rye. 202, S. C.; Smith's Leading Cas. 417.

<sup>b</sup> Rawlin's case, 4 Co. Rep. 52; *Trevivor v. Lawrence*, 2 Ld. Ryam. 1084, S. C.; 6 Mod. Rep. 256; Smith's Leading Cas. 2nd edition, 434, note.



as expectant heir of a living person, or as expectant heir of the body of a living person,) to an estate in lands not being a vested estate, and whether he be or be not ascertained as the person or one of the persons in whom the same may become vested, to dispose of such lands for the whole or any part of such estate therein by any assurance, whether deed, will, or any other instrument by which he could have made such disposition, if such estate were a vested estate in possession. Provided, nevertheless, that no such disposition shall be valid or have any effect where the person making the same shall not, at the time of the disposition, have become entitled to such estate, unless the deed, will, or other instrument, by virtue of which he may become entitled, be existing and in operation at the time of the disposition."<sup>c</sup>

The 6th section of the Real Property Amendment Act, 8 & 9 Vict. c. 100, s. 6, like the 5th, the corresponding section of the repealed statute, the Transfer of Property Act, proposes to remedy the deficiency in the English Fines and Recoveries Act. The 6th section enacts,—"That after the 1st October 1845, a contingent, an executory, and a future interest, and a possibility coupled with an interest in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility, be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent into or upon any tenements or hereditaments in England, of any tenure, may be disposed of by deed."

This enactment, as far as contingent or executory interests were concerned, appeared (said Mr. Shadwell) to be drawn more elaborately and minutely than the corresponding section in the Irish act, but had, as far as he could see, very much the same effect.

There was, however, one distinction made in the 6th section of the Real Property Amendment Act, which it was very difficult to explain. The power of conveying rights of entry was confined to England,—“rights of entry upon any lands or hereditaments in England” were the words, while the power of conveying contingent or executory interests was not so confined, but was expressed generally, and would extend to Ireland as well as to England. What the reason of this distinction might be he could not undertake to say. If there was to be a distinction between the two countries, one should have expected the distinction to be the other way. For the clause of the Irish Recovery Act which he had read, gave the power of conveying contingent or executory estates, but did not give, except in a very general way and by words that might admit of different constructions, the power of conveying a right of entry. The present act certainly gave what was not wanted, and did not give what by possibility might be

wanted. If this be an intentional error, the learned framers of the act were not chargeable with it, for in their letter they say,—“As the 22nd section of the statute for abolishing fines and recoveries in Ireland, has provided in terms somewhat different from the contingent interests, we have deemed it advisable to confine the 6th section of the proposed bill to England.” And Mr. Davidson’s explanation is to the same effect.<sup>d</sup> He says,—“This section as it came from the framers applied to England only, but in parliament the words ‘in England’ were struck out in the first branch, and the reference to the Irish Recovery Act added: the words ‘in England’ in the second branch, were, it is supposed, left in through inadvertence.”

Mr. Shadwell next adverted to the consideration of the numerous anomalies relating to the property of married women, and in particular to the modes by which it was capable of being conveyed.

Had the repealed statute been allowed to remain, its fifth section, whatever might have been the construction of it, would have been destined to increase the number of those anomalies. Under the old law, and speaking generally, and without reference to any particular settlement, a married woman, by joining with her husband in a fine or recovery, could dispose of any estate or interest of hers in landed property, whether coming to her in her own right by descent, devise, or conveyance, or affecting his property as her dower or jointure, and whether in possession or expectancy, and whether vested or contingent, and in the same way she might also disclaim.

The repealed statute, in giving the power of conveying contingent or executory interests, which was omitted in the Fines and Recoveries Act, did not expressly mention married women; and if it was wrong to suppose, that they were included in the general working of the clause, then it followed that the married woman, who under the Fines and Recoveries Act would have a power of disposing of all her vested interests in land, whether present or future, tantamount to what she had under the old law, would, with respect to these contingent and executory interests, be deprived of that power of conveying them which the old law had endowed her with, and which it seemed there was at least as much reason for restoring to her, as to the other persons whom the act professed to enable. Upon this point the letter of the learned framers said, “With respect to married women the existing act makes no distinct provision, and the general enactment, that any person may convey, &c., by deed, could not have been intended to enable married women to convey contingent interests, without an observance of the provisions respecting conveyances by married women of the Statute for the Abolition of Fines and Recoveries. We con-

<sup>d</sup> Davidson’s Precedents in Conveyancing, 2nd edit. p. 69, note b

<sup>c</sup> 4 & 5 Wm. 4, c. 92, s. 22.

sider that a question might arise, whether married women are included under this section, and if included, whether their conveyances would not be effectual without a compliance with the provisions of the above statute. We have therefore directed in express terms, that dispositions by married women, under the 6th section of the proposed bill, should conform to those provisions."

A further question which might have arisen under the repealed statute was, whether, if married women were included in the 5th section, it enabled them to dispose of their future interests in personal property; for if it did, it was making a most important alteration in the law. As the provision had been by the present act altogether repealed (except for the nine months in last year), it was of little moment to consider what was its true construction, but it gave a fair opportunity of considering those parts of the law, which apparently it professed to deal with. It was very difficult to give a reason satisfactory to common sense, for any difference between a married woman's power to dispose of her future interest in land, and her power to dispose of her future interest in personalty. But though common sense might not make any difference between the two kinds of property, the law made the very greatest. In *Roper on the Law of Husband and Wife* (particularly in Jacob's edition) many distinctions were taken, which, as they stood rather upon arbitrary decision than upon any plain and intelligible grounds of reasoning, were extremely difficult to recollect, and many cases which it was almost impossible to reconcile with each other. They seemed all, however, to flow more or less connectedly from the two general propositions:—That personal property coming to the wife during the marriage, and reduced by the husband into possession, or dealt with by him in a manner tantamount to reduction into possession, belonged absolutely to the husband, but that personal property to which the wife might become entitled during the marriage, but which, either from its being reversionary, or from its being incapable of being recovered, or any other reason, was not reduced into possession by the husband, if she happened to outlive him, belonged to her by right of survivorship.

Leaving for the present the husband's power to assign the wife's *legal* chattels, and choses in action, Mr. Shadwell proceeded to consider the husband's power, either with or without his wife, to assign her *equitable* reversionary interests and her equitable choses in action, and to trace the progress of the decisions towards the present state of the law on this part of the subject, namely:—

That a husband cannot, either by himself, or in conjunction with his wife, and either by deed, or by procuring her consent to be taken in court, or in any other manner, make an assignment, either voluntary, or for a valuable

consideration, or through the means of the bankrupt or insolvent laws, of his wife's equitable reversionary interest in personalty, or her equitable choses in action, so as to defeat the right of the wife, if he happen to die and she to survive him, before the property be reduced into possession. These several points had been advanced to by slow degrees, there being at every step a great conflict of opinion among the profession. The first point that was established was, that the wife's title by survivorship prevailed over the right of the husband's assignees in bankruptcy: this was the case of *Mitford v. Mitford*, 9 Ves. 87, a decision of Sir Wm. Grant. In that case there was a bequest of 3000*l.* to trustees, upon trust to pay the interest to a lady for life, or until her marriage, and after her death or marriage, to divide the principal among three persons, one of whom was a married woman. The husband of the married woman became bankrupt, obtained his certificate, and died, leaving his wife surviving previous to the death or second marriage of the tenant for life. Some time after the husband's death the tenant for life married, and the question in the suit was, whether, notwithstanding the bankruptcy, the bankrupt's widow was or was not entitled to her share of the 3000*l.* Sir William Grant decided that she was so entitled, upon the principle, that this being a chose in action, and not reduced into possession during the husband's life, survived to her, and that an assignment under a commission of bankruptcy, though it passed her share, passed it to the assignees only *sub modo*, i. e., provided they received the share, or its value, during the marriage, and that the commission or assignment did not of itself necessarily intercept the wife's right of survivorship.

This was only the case of an assignment by the act of the law, as contradistinguished from an assignment by deed to a purchaser for a valuable consideration; but even upon this the assignment in bankruptcy, it appears from Mr. Roper (writing in 1820), that there were great doubts in the profession, as he states, that previous to the decision so strong was the opinion that the effect of assignments by the act of the law would bar the wife's right by survivorship to the choses in action, whether immediately recoverable, or in reversion or expectancy, that the soundness of his honour's judgment had not been generally considered unimpeachable. Mr. Roper, however, supported the authority of *Mitford v. Mitford*, but from his reasoning did not seem at that time willing to take the next step.

That next step was however taken, and that was, to establish the right of the wife surviving against the assignees of the husband claiming as purchasers under a deed from him for a valuable consideration. That was established by *Purdew v. Jackson*, 1 Russ. page 1. It was an immensely long case, occupying seventy pages. The marginal note was as follows:—  
"Husband's assignment of his wife's reversionary interest in a personal chattel. Where

husband and wife, by deed executed by both, assign to a purchaser, for valuable consideration, a moiety of a share of an ascertained fund, in which the wife has a vested interest in remainder expectant on the death of a tenant for life of that fund, and both the wife and tenant for life outlive the husband, the wife is entitled by right of survivorship to claim the whole of her share of the fund against such particular assignee for valuable consideration."

The elaborate judgment of Sir Thomas Plomer, M. R., like the rest of the case, was much too long to quote, but Mr. Shadwell selected one passage from its peculiar appropriateness.

"Here a wife was entitled to a chose in action, which, in the events that took place, it was not possible for the husband during his life to reduce into possession. He died not only before the wife had acquired any right to the possession, but before she had even any present right of action. On the death of Elizabeth Purdew, the tenant for life in 1822, three years after the decease of Bolton, the husband, and not sooner, the fund became divisible into seven parts, of which one part belonged to the surviving wife. How is it possible that in such a case the husband could either acquire or transfer to another, an immediate right of possession? As to the husband himself, and his executors, it is not pretended that any claim could have been set up on his or their part: he died before he did or could perform the condition on which he was to acquire by the marriage any property in this chose in action: he left it a chose in action at his death, in the possession of another, who was the rightful owner during Elizabeth Purdew's life: he did not live long enough to have acquired any right to reduce it into possession.

"If the husband himself could not perform the condition on which his property in this personal chattel was to depend, how could any act of his alter the nature of the thing? How could his assignment have any such effect? The nature and operation of such an instrument is, to pass to another the right which the assignor has. The assignee may in some cases have a better and more extended right than the assignor had, but could the thing assigned be totally changed in its nature? Could he confer an absolute right to the property wholly freed from the wife's contingent right? Could the assignment of a future right of action give a present right of action? Could it give a present right of possession? Could it authorize the assignee to reduce immediately into possession, what did not become due till ten years afterwards? By changing hands, could that which was a contingent and future right of action, become an absolute and immediate right of possession? How could the assignee take the property, or any part of it, from Elizabeth Purdew, during her life? In other words, how could he accelerate the possession any more than the husband himself

could have done? How could he prevent its continuing to be a mere chose in action, which was to be reduced into possession at a future period?"

This leading case of *Purdew v. Jackson* had always been considered to have settled the question. Other cases on the point were—*Honor v. Morton*, 1 Russ. 65; *Hornaby v. Lee*, 2 Mad. 16, which was also before Sir Thomas Plomer, and came in order before *Purdew v. Jackson*; *Elliott v. Cordell*, 5 Mad. 147; *Stamper v. Barker*, 5 Mad. 157.

There had also been very lately a case before the Vice-Chancellor of England, clearly recognising the doctrine as laid down in *Purdew v. Jackson*, and distinctly approving of that case. *Elison v. Elwin*, 13 Sim. 309. The facts were, that by articles of marriage, made previous to the marriage of Miss Elison, a young lady *under age*, with Ralph Nicholson, it was agreed when she came of age, to assign to trustees her reversionary interest in certain personal property, expectant upon the decease of her father and mother, upon the usual trusts of a marriage settlement. The marriage took place. The lady came of age, and the settlement was made in pursuance of the articles. Mrs. Nicholson survived her husband. After his death, the tenant for life died, and the family affairs being thrown into Chancery, Mrs. Nicholson insisted that she was an infant when the articles were executed, and that therefore she was not bound thereby, and that she was absolutely entitled to the fund. Whether she was or not was the question, and that depended upon whether the assignment by her husband of her reversionary chose in action was valid. The case appeared to have been very well argued, and all the cases were quoted. The decision was in favour of Mrs. Nicholson.

The Vice-Chancellor said:—After repeated discussion in the case of *Purdew v. Jackson*, before Sir Thomas Plomer; and by Sir Thomas himself; he said, "After this repeated consideration of the subject, I still continue of opinion, that all assignments made by the husband of the wife's outstanding personal chattel, which is not, or cannot be then reduced into possession, whether the assignment be in bankruptcy, or under the Insolvent Acts, or to trustees, for payment of debts; or to a purchaser, for valuable consideration, pass only the interest which the husband had, subject to the wife's legal right by survivorship. 1 Russ. 70. In that case Mrs. Bolton being entitled to a share of 3 per cents. after the death of Elizabeth Purdew, she and her husband executed an assignment of her share to Rose for valuable consideration. Then Bolton the husband died. Afterwards, Elizabeth Purdew died. And the question was, whether Rose was entitled to the share, or Mrs. Bolton, and those who claimed under her.

"Precisely the same question arose in *Honor v. Morton*, 3 Russ. 65; and the present Lord Chancellor decided in the same way. Upon the question that arose in these two cases I must consider the law as settled. In the course of the first argument in *Purdew v. Jackson*, the

Master of the Rolls put this question : Is there any case in which a husband having assigned the wife's present chose in action, and having died before the assignee obtained possession of it, the assignee prevailed over the surviving wife? 1 Russ. 19. The leading counsel on both sides, one of whom was the present Lord-Chancellor of Ireland, said, 'We believe that such a case has not occurred.' A note to the report seems to call in question the accuracy of that answer, and it refers to the case of the *Earl of Salisbury v. Newton*, and the case of *Bates v. Dandy*, of which, besides the report in *Atkyns*, one statement is given in a note to *Purdey v. Jackson*, at page 33, and another in a note to *Honor v. Morton*, at page 72. It appears from the report of the *Earl of Salisbury v. Newton*, in 1 Eden, that the only point made by the counsel for the widow was, that she was entitled to have a settlement; and as to *Bates v. Dandy*, Lord Lyndhurst, in 3 Russ. p. 72, observes, that no doubt could be entertained as to the husband's power over the property; and the application of that case to the present question rests not on the decree, but on a dictum, which was wholly unnecessary for the decision of the actual points which were before the court, so that the answer of the counsel was in substance correct. As to the case of *Lord Curteret v. Paschal*, 3 P. Wms. 197, on which Mr. Anderdon seemed to lay great stress, it actually was decided on the ground, not that the husband could assign his wife's chose in action, but that he might assign her interest in land in the nature of an equitable extent under Lord Cowper's decree. And it is also observable from what is stated in p. 199, that Lord King appeared to be of opinion, that if the wife's chose in action was not reduced into possession during the husband's life, it survived to her as against his assignee.

"It is useless to be always travelling over the same ground. I consider the principle laid down by Sir Thomas Plomer, and twice affirmed by the Lord Chancellor, to be decisive of the present question. Whether the husband dies in the lifetime of the tenant for life, whereby the chose in action cannot as against the wife be reduced into possession, and whether he survives and dies before it is reduced into possession, the same result must, in my opinion, follow: and the consequence is, that in the present case a declaration must be made, that Mr. Nicholson's covenant, which might operate as an assignment, does not now affect that portion of the choses in action of his wife which was not reduced into possession in his lifetime."

## NOTES ON EQUITY.

### MUNICIPAL CORPORATION. — EQUITABLE JURISDICTION.

We took occasion in the *Legal Observer* of the 8th November last to advert to a series of adjudications upon corporation

frauds, and the remedial jurisdiction of the Court of Chancery. A case now before the Vice-Chancellor of England, in which the mayor, aldermen, and burgesses of Louth, in Lincolnshire, are plaintiffs, and the trustees of the grammar school there, founded by Edward 6th, are defendants, raises some questions of great legal difficulty—and of no slight interest as regards the nature and character of municipal corporations. Its ultimate fate will, perhaps, throw a new light upon the working of the all-important Municipal Reform Act, 5 & 6 Will. 4, c. 26. That act (as we before remarked) did not make new bodies corporate. Where, antecedently to the act, there was in being a municipal corporation, properly so called, the act expanded its constitution, and gave it uniformity or character with other bodies of a like description. But where before the act there was merely a borough council without legal corporation, the act did not confer corporate qualities in such a case. It amended, indeed, and liberalised the constitution of places not incorporated—it gave the inhabitants a parliamentary franchise and a control in the management of their affairs—it gave them the election of their town officers or governing bodies, where before they had no voice in such election. But it left the question of incorporation untouched; the legislature not intending to trench upon the rights of the crown; which has at all times enjoyed and exercised the peculiar prerogative of municipal incorporation. Accordingly, of the many places which, under grants from the crown have municipal constitutions, enabling them to act through the instrumentality of town or borough councils, comparatively few are corporations.

We greatly doubt whether more than one-third of the boroughs included in the schedules of the Municipal Reform Act are truly corporate bodies—the statute merely saying, that they shall by their new name of "Mayor, Aldermen, and Burgesses," (which is made common to all,) have the same power of "doing and suffering" which they formerly had by their old name or title before the passing of the act. This is a question which it well behoves every town, city, or borough affected by the act, materially to consider, before embarking in litigation at law or in equity.

In the Louth case, as we collect from the arguments of counsel, it appears that that town

was a borough of ancient date, and that in the 6th of Edward 6, a charter was granted by that prince, whereby he erected a body corporate, by the name of the Warden and Assistants of the Town of Louth and Free Grammar School there, to have continuation for ever. To this body corporate he by the charter granted a munificent endowment, consisting of two distinct species of property. 1. He granted to them lands belonging to certain religious houses in and about Louth—dissolved by act of parliament and vested in the crown, not absolutely, but (by 1 Edw. 6, c. 14) upon trust, to apply the same "to the erecting of grammar schools, the further augmenting the universities, and better supporting the poor and needy." 2. He granted to them certain annual fairs and certain weekly markets, which were not vested in the crown by the act in question, but by compulsory conveyance from the Bishop of Lincoln, who had anciently been the lord or owner of those fairs and markets.\*

Now the objects for which this grant was made are stated by the charter to have been the maintaining of a grammar school, to be erected in Louth, to be called King Edward's Sixth Free Grammar School there; and likewise an hospital or bedehouse; and so far, the foundation is, beyond all doubt, eleemosynary. But in the charter there are expressions which have given rise to an opinion, that it partakes also of a municipal character. The plaintiffs contend, that King Edward, in the grant of the fair and markets, meant the benefit of the town, rather than of the school. They allege, that by the charter, the warden and assistants were not mere trustees of the grammar school, but were invested likewise with municipal authority in the town, as is shown by the direction for the election of these functionaries, which election is appointed to take place in the "Common Hall of Louth;" and it is expressly declared, that they are "to preside in the town for the good rule and better government thereof;" expressions which, the plaintiffs contend, plainly indicate a municipal purpose, and are inconsistent with the idea of the corporation being merely charitable.

In these circumstances, it appears that the mayor, aldermen and burgesses of Louth, acting under the authority of the Municipal Reform Act, have filed their bill, setting forth, that by the statute the corporation of the

warden and assistants have been deprived of municipal authority, and that that authority is now by the act vested in the plaintiffs, to whom also belongs all property granted by King Edward, which can be shown to be of a municipal character. The plaintiffs therefore contend, that it ought to be decreed that the defendants hold the property in question upon trust for the plaintiffs, against whom an account is prayed. In support of the plaintiffs, there appeared Mr. Stuart, Mr. Willcock, Mr. Rolt, and Mr. Adams.

Three days were occupied in stating the plaintiffs' case. The case of the defendants was opened by Mr. Bethell, on Monday. He was followed on Tuesday by Mr. James Parker, who finished on Wednesday, when the court was likewise addressed by Mr. Cankria; and on Saturday Mr. Macqueen will be heard on the same side. The Vice-Chancellor has repeatedly pronounced the case to be not only very important, but extremely interesting; and certainly the patience and good humour exhibited by his Honor, in consenting to bear it at a time when the other equity judges are enjoying their vacation, is beyond all praise.

## PROPERTY LAWYER.

### OPERATION OF THE 7TH SECTION OF THE LIMITATION ACT, NOT RETROSPECTIVE.

THE questions arising upon the construction of the statutes, by which the legislature has thought fit to limit the period within which persons claiming to be entitled to real property may assert their rights to such property, are of extensive as well as permanent interest. A cause of this nature was some time since submitted for the consideration of the Court of Queen's Bench, and has lately been reported,\* in which the point for decision was, whether the 7th section of the act 3 & 4 Will. 4, c. 27, applied, where a tenancy at will ceased before the passing of the statute.

The action was brought in ejectment to recover some lands in Worcestershire, upon the following state of facts:—

The lessor of the plaintiff claimed as heir at law to his father, who died in November, 1816. After the death of the father, the mother of the lessor of the plaintiff continued in possession of the premises in question, as tenant at will to the lessor of the plaintiff, until her death in July 1832. Upon the decease of the mother, the defendant without any title took possession of the premises, and continued in such possession until the action was brought, not as agent, but adversely to the lessor of the plaintiff. The plaintiff having had a verdict, the matter was brought before the court upon a rule to enter a verdict for the defendant, or a nonsuit.

\* The way in which the Catholic bishops were compelled at the Reformation to surrender all the property of their sees into the hands of the first defender of the faith and his son Edward, is best explained by the learned and accurate Dr. Lingard. In ancient times fairs and markets belonged usually to the clergy. Thus, Blackstone, vol. 4, p. 272, tells us, that "the cognizance of weights and measures was anciently committed to the bishop;" who appointed some clergyman under him to inspect the abuse of them more narrowly—and hence this officer, though now always a layman, is still called the *clerk* of the market.

\* *Doe dem. Evans v. Page*, 5 Q. B. 767.

The 3 & 4 Will. 4. c. 27, s. 2, enacts, that no person shall bring any action to recover any land, but within twenty years after the right to bring such action shall first have accrued; and by the 7th section, it is enacted, that when any person shall be in possession of any land, as tenant at will, the right of the person entitled subject thereto, to bring an action to recover such land, shall be deemed to have first accrued, either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

The contention on the part of the defendant was, that section 2 was retrospective, and that as section 2, explained by section 7, limited the right to recover to twenty years from either the determination of the tenancy at will, or the end of a year from its commencement, whichever may have first occurred, and the plaintiff had not exercised his right to bring an action, within twenty years after the month of November 1817, when one year expired, after the commencement of the tenancy, he was now barred by the operation of the statute. To this it was replied, on behalf of the plaintiff, that the act 3 & 4 Will. 4, passed on the 24th July, 1833, whilst the tenant at will (the plaintiff's mother) died in 1832, and that the words, "shall be," in the 7th section could not refer to a tenancy which had expired before the act passed. The case was distinguished from *Turner v. Doc dem Bennett*,<sup>b</sup> because in that case a tenancy at will was in existence when the statute passed; and it was observed, that the construction contended for by the defendant would destroy rights existing at the time of passing the statute, as a tenancy at will of more than one-and-twenty years' standing existed at that time.

After time had been taken for consideration, Lord Denman, C. J., delivered the judgment of the court, and in so doing observed, that the tenant at will died one year before the passing of the act, and if the act had not been passed the lessor of the plaintiff would clearly have been in time with his ejectment, as the period when his right accrued would have been calculated from the death of the tenant at will in July 1832, when the tenancy determined, and not in November 1817, being the expiration of a year next after the determination of the tenancy, as provided by section 7. If that section was applicable to the present case, the lessor of the plaintiff was too late, as the right of the lessor of the plaintiff accrued in 1817, more than twenty years before the ejectment was brought. The court was of opinion, however, that the 7th section only

applied to cases of tenancies at will existing at the time the act passed, or subsequently; and that it did not apply to cases where the tenancy at will had been determined before the passing of the act. The 7th section in its terms was only applicable to the case of a future, or at most of an existing tenancy at will, and not to the case of a tenancy at will which had been determined and was not existing when the act passed. It was also observed, that a different construction would cause great hardship, for a person who, as the law stood before the passing of the act, had ample time to recover property which might be undoubtedly his, would by the sudden operation of the statute, be deprived of the means of asserting his right, there being no clause for the postponement of the operation of the statute for such a period as would enable persons who would be otherwise affected by it, to assert their rights. Upon these considerations the court gave judgment for the plaintiff, and discharged the defendant's rule.

## NEW BILLS IN PARLIAMENT.

### DUTIES OF CONSTABLES, JURORS, AND CLERKS OF THE PEACE.

By the 7 & 8 Vict. c. 33, high constables are relieved from attending at the quarter sessions of the peace of their several counties in certain cases, and from the performance of certain other duties then by law imposed on them. The present bill recites, that it is entirely expedient to relieve high constables from attending at such sessions, and at the courts of assize and general gaol delivery, and from the performance of certain other duties at present by law imposed on them. It is therefore proposed to enact—

1. That the high constables of each hundred, borough, liberty, lathe, wapentake, or other like district, shall be entirely exempted and relieved from attendance, by virtue of their office of high constable, at the quarter sessions of the peace of their several counties, and at the courts of assize and general gaol delivery.

2. That so much of 6 Geo. 4, c. 50, as requires the clerk of the peace in every county, riding, and division in England and Wales, to issue and deliver his warrant to the high constables of each hundred, lathe, wapentake, or other like district (s. 4), and so much of the said act as requires such clerk of the peace to annex printed forms of precepts and returns to his said warrant (s. 5), and also so much and all such parts of the said act as imposes any duties or penalties whatever on such constables, or requires them to do or perform any act, matter, or thing, shall be repealed (ss. 6, 10, &c.)

<sup>b</sup> In error, 9 M. & W. 643, same case in the Exchequer, 7 M. & W. 226.

3. That the clerk of the peace in every county, riding, and division in England and Wales, shall within the first week of July in every year issue his warrant to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships, within his county, riding, or division, requiring them by such warrant to prepare and make out, before the first day of September then next ensuing, a true list of all men residing within their respective parishes and townships, qualified and liable to serve on juries, according to the last-recited act, and also to perform and comply with all other the requisitions in the said warrant contained.

4. Clerk of the peace to annex printed forms of returns to his warrant. 6 Geo. 4, c. 50, s. 5.

6. Notice of petty sessions to be held in the last week of September to be given to churchwardens and overseers by petty sessions clerks. 6 Geo. 4, c. 50, s. 10.

6. Lists, after allowance by petty sessions, to be forwarded by clerk of petty sessions to clerks of the peace. 6 Geo. 4, c. 50, s. 10.

7. Lists to be kept by clerk of the peace, and jurors' book to be delivered to the sheriff. 6 Geo. 4, c. 50, s. 12.

8. Doubts being entertained as to the construction of so much of the 5 Geo. 4, c. 50, s. 1, as relates to the qualification of persons being householders rated or assessed to the poor, and it being expedient to remove such doubts, it is proposed to enact, That any person who, being a householder, shall be rated or assessed to the poor rate in the county of Middlesex, on a value of not less than 30*l.* or in any other county on a value of not less than 20*l.* for or in respect of any property whatsoever, (without regard to the sum at which such person may be rated in respect of his house,) shall be qualified and liable to serve on juries according to the intent and meaning of the said act.

9. That the clerk to the special sessions, and also the steward or other officer or person presiding at any court leet or other court at which any high constable of a hundred, borough, liberty, lathe, wapentake, or other like district shall be appointed, shall, within seven days after each appointment of any such high constable, make out, and send by post to the clerk of the peace in every county, riding, and division in England and Wales, a return in writing of the name and residence of the person so appointed, with the date and term of his appointment, and the name of the hundred, borough, liberty, lathe, wapentake, or other like district for which he is so appointed; which return shall be preserved by such clerk of the peace among the records of the sessions.

10. Act to be construed with 6 Geo. 4, c. 50.

## QUESTIONS AT THE EXAMINATION.

HILARY TERM, 1846.

### I. Preliminary.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

### II. Common and Statute Law, and Practice of the Courts.

Name the different kinds of actions at common law, and how they differ.

Within what time must an application be made to set aside an award?

What is the usual course to be pursued, where a deed or document required for the purpose of the cause is in the possession of the adverse party, and if not produced, to enable secondary evidence to be given of its contents?

How is time computed in a cause? If a party has four days from Tuesday the tenth, when does it expire?

Can landlords distrain the property of a third person for rent due from their own tenants, and are there any exceptions? and suppose they are implements of trade, how then?

State shortly the nature of replevin, its use, and the mode of proceeding.

After what period will a deed prove itself?

What is the proper mode to proceed against a wilful trespasser, where the damages are under £5?

In what case can a witness be examined notwithstanding he may be interested, and how will the judgment in the suit operate far or against him in any subsequent suit?

What dilapidations or repairs is a tenant from year to year liable to make good in respect of a messuage so let to him?

In what cases may the party issue execution before judgment, on trial, inquisition, warrant of attorney, or cognovit? and how must he proceed in such cases?

How must you proceed to keep a debt alive, where the Statute of Limitations would otherwise run?

If a landlord lets a house on an agreement, and the tenant runs away, leaving no sufficient property on the premises to pay the rent, how is the landlord to obtain possession so as to put an end to the agreement? and how would the case be altered by the tenant secreting himself on the premises and shutting them up?

Under the Tithe Commutation Act, to whom is the tithe owner to apply in the first instance for his rent charge? and, if

not paid, what proceedings must he adopt, and against whom?

For what damages are hundredors now liable, and what steps must be taken to enforce the claim, and are any previous steps necessary to action?

### III. Conveyancing.

What words of limitation are ordinarily used to create the following estates, viz. :— estate in tail male; estate in tail; estate in tail male special; estate in tail special; estate in fee; estate for life; estate for years?

Designate the several parts of a conveyance from A. seised in fee to B. in fee. Is there any and what formal difference, supposing A. to have taken the estate by descent from his father or other ancestor?

Does a term ever and when become attendant upon the inheritance without an actual assignment to attend?

A. and B. contract for the sale and purchase of an estate, partly freehold, partly copyhold, and partly leasehold, in Middlesex, and to deliver the contract to their respective solicitors to carry the sale and purchase into effect: state the various proceedings of the solicitors down to the time of completion respectively for their clients, and the order and course of such proceedings, and at whose expense they are taken.

What is an escrow?

Can an estate in joint tenancy be severed, and how, and by whom?

What is a contingent remainder? Show the technical creation of one.

What is the difference, if any, between an estate in reversion and an estate in remainder?

What is an estate in coparceny, and how does it arise?

A. by bargain and sale, duly enrolled, conveys to B. and his heirs, to the use of C. and his heirs, in trust for D. and his heirs: what estates or interests do B., C., and D., respectively take?

A. seised in fee demises to B. for a term, in mortgage; A. then mortgages the equity of redemption to C. in fee; A. next pays off B.'s mortgage, and desires to merge B.'s term: how is this to be effected?

Are the freehold estates of a deceased person liable in the hands of the heir, or devisee, to any and what debts of the ancestor or testator?

Is a husband entitled to any and what estate or interest in the freehold of his deceased wife?

What do you understand by the word "hereditament?" and what will pass by it in a deed?

A. contracts for the purchase of a fee-simple estate, and dies intestate before completion: who is entitled to the benefit of the contract, and out of what fund is the purchase money to be paid?

### IV. Equity, and Practice of the Courts.

State some of the cases in which a bill in equity for an account will lie.

State the essential ingredients in contracts or agreements which are required to obtain specific performance in a court of equity.

If A., supposing he has the right, enter into a written agreement for sale of an estate to B., which estate belongs to C., will B. in a bill for specific performance filed against A. and C. be entitled to a decree?

If a trustee become lunatic, what relief can the *cestui que trust* obtain?

When a trustee who has been appointed by deed, and has accepted the trust, refuses to act, what is the proper course to be pursued to obtain an execution of the trust?

What remedy does a court of equity afford to creditors of deceased persons?

What remedy has one partner against his copartner whom he accuses of breach of the copartnership deed?

In what cases will the Court of Chancery appoint a receiver of real or personal estate?

How would you proceed to obtain payment of a legacy charged on a real estate?

What is a bill of foreclosure?

What is a bill of discovery?

Can persons residing in a foreign country take proceedings in the English Court of Chancery?

What is the proceeding to compel a corporation to answer a bill in equity?

State the mode of compelling appearance and answer to a bill against a private individual, a member of parliament, and a peer.

How is evidence given in a chancery suit?

### V. Bankruptcy, and Practice of the Courts.

What description of persons are subject to the jurisdiction of the bankruptcy laws? Are farmers included in the list?

Are clergymen prohibited from trading, and is the legality of the trading in this and other cases material as an exemption from the bankruptcy laws?



Are femmes covert and infants liable to be made bankrupts? State the general rules as to both?

What acts of a trader, with any and what intent concerning his creditors, are deemed acts of bankruptcy?

What are the necessary facts to be ascertained, and steps to be taken previous to striking a docket?

State the amount required for a petitioning creditor's debt in the case of a single creditor, of two creditors not being partners, and of three or more creditors not being partners, and under what statute.

Within what time must an act of bankruptcy be committed to support a fiat, and will the fact of its being a concerted act invalidate the fiat?

Will an equitable debt support a fiat? and describe what is meant by an equitable debt?

Can a country fiat be obtained against a London trader, and a London fiat against a trader in the country, and what is the practice when such is desired in each case?

Is a trader entitled to any and what notice of the adjudication of bankruptcy, and to any and what time to dispute the same?

By whom are assignees of the bankrupt's estate chosen? and who may vote in such choice?

Are the assignees liable to pay the solicitor's bill for obtaining and prosecuting the fiat up to the choice of assignees, and are they personally liable after choice?

Is there any preference, and to what extent, over the other creditors allowed to a landlord for rent?

If a bankrupt be holder of leasehold premises which are not likely to be beneficial to the estate, what course must the landlord and assignees respectively take in regard to the property?

Explain what is meant by a right of stoppage *in transitu*, and in what case it be exercised?

## VI. Criminal Law, and Proceedings before Magistrates.

State the mode of preferring, and shortly, the material parts of an indictment.

State in what cases a motion is made for arrest of judgment, and within what time. Is it necessary the defendant should be present upon motion made, and if so, why?

Are there any and what cases in which a prosecutor can claim costs of a defendant?

State generally in what cases a certiorari may be moved for.

State the mode of application, and what is required of the party applying for a writ of certiorari, either prosecutor or defendant?

State in what cases leave to exhibit articles of the peace is applied for.

State the mode of application, the material allegations necessary, and what will be required of the party against whom the application is made, if application granted.

Can the party against whom the articles are exhibited controvert the statement; and if he is bound to submit, what is the remedy if the statement is untrue?

State shortly the nature of the writ of *Quo Warranto*, in what cases it is usually applied for, within what time, and upon whose application.

State in what cases a *Habeas Corpus* to bail a prisoner is applied for, and, shortly, the mode of proceeding.

State the mode of compelling magistrates to hear cases, within what time the application should be made; and are they subject to payment of costs for having refused to adjudicate?

Can magistrates compel the attendance of witnesses, and by what process?

By whom are magistrates appointed, and how removed?

State the difference between burglary and larceny; and whether there is any, and what, difference in the punishment?

What are the different modes by which a parochial settlement can now be gained?

## APPLICATIONS FOR ADMISSION AS ATTORNEYS.

*Easter Term, 1846.*

[Concluded from page 285, ante.]

*Queen's Bench.*

### *Clerks' Names and Residences.*

Harris, Frederick, 4, Grafton Street, Fitzroy Square; and Aston near Birmingham  
Hodgson, George, Great Driffield  
Hippisley, Robert Townsend, 9, Thavies Inn, Taunton; and Norfolk Street, Strand

### *To whom Articled, Assigned, &c.*

Henry Witton Tyndall, Birmingham  
Richard Jennings, Great Driffield  
John Foy Rees, Taunton

Hand Henry, 12, Wakefield Street, Regent Square; Hertford (Cheshire); and Essex Street	Thomas Ives Brayne Hostage, Castle Northwich
Hick, John George, 4, Wharton Street, Lloyd Square, Pentonville; Stokesley; and Pimlico	Henry Hick, Stokesley
Heath, John Massey, Theberton Street, Gibson Square; and Sekford Street	George Vincent, King's Bench Walk
Harris, Albert Domett, 111, Regent Street, Lambeth	Frederick Carritt, Basinghall Street
Hichens, William, jun., 27, Garnault Place, Middleton Square; and St. Ives	William Hichens, St. Ives
Hulme, Joseph, 12, Wakefield Street, Regent Square; Chester; and Essex Street	Charles William Potts, Chester John H. Adams, Old Jewry Chambers
Hicks, Leonard Hopwood, Paddock Lodge, Junction Road, Kentish Town; Gray's Inn Square	Leonard Hicks, Gray's Inn Square
Hinton, Richard Thomas, Camden Terrace, Camden Town	Humphrey Hinton, Wenlock Robert H. Baines, Gray's Inn Square
Jones, John, Newark-upon-Trent; and Stamford	Thomas Fowke A. Barnaby, Newark-upon-Trent
Jones, William Halse Gatty, 7, Crosby Sq.	William Jones, Crosby Square
Jones, Thomas, 37, Upper Albany Street, Regent's Park; Chorley; Moreton Terrace	John Jones, Chorley Edward D. Stanton, Chorley
Jolley James Hatch, 1, Upper Stamford St., Blackfriars' Road	John Gilbert Meymott, Blackfriars' Road
Knapp, John, 31, Charles Street, City Road; and Worcester	Charles Pidcock, Worcester
King, William Dinham, 119, Stanhope Street, Mornington Crescent; St. Austell; and Camelford	William Shilson, St. Austell
Lawrence, George, 2, Norwood Place, Kensington	Frederic John Reed, Friday Street
Lewis, Charles Edward, 65, Upper Stamford Street	Henry Compigne, Bucklersbury
Lambert, Alfred, 13, Upper Stamford Street	John Iliffe, Bedford Row
Moon, William, 10, Fortess Terrace, Kentish Town; and Cumming Street	William Harris, Stone Buildings
Moore, Robert Bendle, Carlisle	Robert Bendle, Carlisle Robert Toulmin, Staple Inn James Mounsey, Carlisle William Urwick, Ludlow
Marston, Richard, Ludlow	Adlard Welby, Uttoxeter
Mason, Charles, 307, High Holborn; and Uttoxeter	William Manby, Wolverhampton
Manby, Edward, 21, Wakefield Street, Regent Square; Wolverhampton; and Hercules Buildings.	John William Wall, Devizes
Mantell, Alexander Houstoun, 59, Burton Crescent; and Farringdon	David William Wire, St. Swithin's Lane
Mote, Edward, 21, Penton Place, Pentonville	Samuel Miles, Leicester
Miles, Thomas, jun., 15, Great James Street, Bedford Row; and Leicester	Roger Miles, Leicester
Maddock, Samuel H. Clark, 7, John Street, Adelphi; and Clifton	Arthur John Knapp, Bristol
Morris, Price, Deabigh	Thomas Hughes, Astrad
Mellor, William Jones, St. Ives	Benjamin Aislabe Greene, St. Ives
Newman, Samuel, 17, Chester Street, Grosvenor Place	Hervey Gem, Lincoln's Inn Fields
Nevill, Richard, 5, Princes Street, Bedford Row; and Tamworth	Robert Nevill, Tamworth
Orchard, William Henry, Hornsey; Milton-on-Thames	Edward Farn, Gray's Inn Square
Phipps, Thomas, 5, Montpellier Row, Lambeth	J. H. F. Lewis, Essex Street Strand
Pope, John Woodford, Exeter	John Daw, Exeter
Prance, Courtenay Connell, Nether Stowey, near Bridgewater; Huntley Street, Plymouth	Alfred Rooker, Plymouth
Prescott, George William, Stourbridge; Grange Row, Dalston	Rowland Price, Stourbridge

- Podmore, William Handsley, 52, Rahere St., Goswell Street; Birmingham; and Sparkbrook . . . . . Jesse Bartlett, Birmingham
- Peake, William Frederick, 13, Hans Place, Sloane Street; Upper Eaton Street; and Lower Belgrave Place . . . . . Thomas Clarke, Craven Street  
R. G. Clarke, Craven Street
- Perham, John Isaac, Redhill, Wrrington . . . . . Thomas Hamlin, Redhill, Wrrington
- Peake, Henry, New Sleaford; Upper Eaton Street, Lower Belgrave Place; and Hans Place . . . . . Goddard Jackson, Wisbeach
- Pollard, William Darley, Manchester . . . . . Harrison Blair, Manchester
- Phillips, John William, 13, Chadwell Street; and Haverfordwest . . . . . Thomas Gwynne, Haverfordwest
- Powell, Edward Howell, 20, Newman Street; and Ripon . . . . . Thomas Farmery, Ripon
- Philcox, James, jun., 85, High Holborn, Lincoln's Inn Fields; and Burwash . . . . . J. Philcox and J. Baldock, Burwash
- Parry, Thomas, Carmarthen . . . . . Thomas Williams, Carmarthen
- Poulton, Henry, 8, Lloyd Street, Lloyd Sqr. . . . . Henry Darvill, New Windsor
- Quick, Henry Brannan, 30, Gloucester Crescent, Regent's Park . . . . . James Dyer, Ely Place
- Rogers, Henry, 8, Northampton Place; Cannonbury Square . . . . . Edward Rogers, Stourbridge
- Rogers, Henry, Sheffield . . . . . Thomas William Rogers, Sheffield
- Robinson, Thomas, Rugeley; Aldhous Terrace, Barnsbury Park . . . . . Frederick Crabb, Rugeley
- Reynolds, T. A. Fitzgerald, 11, Calthorpe St. . . . . John Burt, St. Mildred's Court
- Ready, Charles, Swinton Street . . . . . John Lewis, Lewes
- Shuttleworth, Samuel, Roseberry Cottage, Hampstead . . . . . Henry Seymour Westmacott, John Street, Bedford Row
- Sherring, J. Brodribb, jun., Bristol . . . . . Samuel Carey, Bristol
- Shepherd, Thomas Richard, described in his Articles as Thomas Shepherd, George St., Portman Square; and Warrington . . . . . John Ashton, Warrington
- Smith, Ralph Blakelock, 2, Park Place West; Gloucester Gate, Regent's Park; and Sheffield . . . . . Albert Smith, Sheffield
- Sharp, James, 27, Burton Crescent; Southampton . . . . . J. C. Sharp, Southampton
- Somerville, Stafford Baxter, Doncaster . . . . . Edmund Baxter, Doncaster
- Sworder, Thomas, jun., 29, Surrey Street, Strand; and Hertford . . . . . Thomas Sworder, sen., Hertford  
George Debenham, Salters' Hall.
- Smith, Montague George, Hemel Hempsted; Edinburgh; and Carlisle . . . . . William Smith, Hemel Hempsted  
John Philip Dyott, Lichfield  
Anthony Blythe, Burnham
- Spickett, John, 2, Benyon Cottages, Hertford Road . . . . . James Dolman, Clifford's Inn
- Spencer, Edward George, 42, Commercial Road, Lambeth; and Keighley . . . . . George Spencer, Keighley
- Turner, John, 7, Trellock Terrace, Pimlico . . . . . R. Rushton Preston, Great George Street  
Joseph Parkes, Great George Street
- Tomlin, James Robinson, 3, Gloucester Street, Queen Square; and Richmond . . . . . Ottiwell Tomlin, Richmond, Yorkshire  
James Williamson, Verulam Buildings
- Tepper, Jabez, 42, High Street, Camden Town . . . . . J. Iles Wathen, Bedford Square
- Unthoff, Edward, 80, Ebury Street, Pimlico; Chelmsford; and St. Petersburg Place . . . . . Robert Bartlett, Chelmsford
- Watson, William, 3, Shawfield Street, Chelsea; and Shrewsbury . . . . . George Harpur, Whitchurch
- Wilkinson, Samuel, Walsall . . . . . John Forster, Walsall
- Wilkinson, Richard, 10, Rufford's Row, Islington; and Kendal . . . . . Roger Moser, Kendal
- Weymouth, Thomas Wyse, 74, Gower Street, Bedford Square; and Kingsbridge . . . . . Isaac Weymouth, Kingsbridge
- Wilkin, Charles, 10, Spring Gardens . . . . . James Wilkin, 217, Piccadilly
- Wilson, William Wilfred, 24, Store Street; and Warrington . . . . . William Beamont, Warrington
- Whiting, William, 22, Noel Street, Islington; Lambeth Terrace; Highgate Hill; and Monmouth . . . . . William Harding Wright, Essex Street

Wright, John Kyme, 18, Canonbury Terrace;  
and Brown's Terrace

John Wright, Rathbone Place

Wheat, John James, 4, Liverpool Street; and  
Naton Lees

John Wheat, Sheffield

Wilson, James, jun., Crescent Place; New  
Bridge Street; and Liverpool

Joseph Mallaby, Liverpool

Wilson, Benjamin, Millford House, Edmonstone

William P. Bartlett, Nicholas Lane

Wendon, George, Dursley

Richard Tabram, Cambridge

John Vizard, Dursley

Wilde, John Thomas, 5, Little Street, Leicester  
Square; and Bristol

James Thomas Woodhouse, Leominster.

Weigall, J. Charles Edwards, 13, Michael's  
Place; Brompton

Thomas Henry Dixon, New Boswell Court

*Added to the List pursuant to Judges' Order.*

Fiske, Edward Brims, 5, Montpelier Street,  
Brompton; Norwich; and Kessingland

Robert Fiske, Beccles

Holmes, Richard, jun., 26, Surrey Street,  
Strand

R. E. Burroughs, Norwich

Watson, George Steward, 73, Basinghall St.;  
28, Bedford Place; Bedford House,  
Kentish Town; and Gloucester Place

Richard Holmes, Arundel

Thomas C. Campbell, Essex Street, Strand

Shafio, George Dalton, Durham

J. Heapy Watson, Basinghall Street

John Burrell, Durham.

*Erratum.*—p. 284, for James Day read James Dry.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL  
COURTS.

*Lord Chancellor.*

ORDERS 67, 68, AND 69, 1845.—SPECIAL  
LEAVE TO AMEND AFTER REPLICATION.—  
AFFIDAVITS IN SUPPORT.

*Application for special leave to amend; under  
the above orders, must in the first instance  
be made to the Master; and the requisite  
affidavits, when the plaintiff is unable to  
join, must be made by the solicitor, and not  
by the clerk alone, who conducts the  
suit.*

PENDING an information, by the Attorney-  
General, against the Trustees of the Reading  
Charity, the governors of Christ's Hospital  
filed a cross bill; and, after replication, ob-  
tained from the Vice-Chancellor of England a  
special order for leave to amend their bill, upon  
the affidavit of their solicitor, conformable with  
order 67, and upon an affidavit by his clerk,  
having the management of this suit, to the ef-  
fect required by order 68.

Mr. Bethell and Mr. Selwyn, on behalf of  
the Reading Charity, moved to discharge the  
Vice-Chancellor's Order, and contended, first,  
that the application for leave to amend should  
have been made to the Master, to whom the  
jurisdiction of the court in such matters was  
transferred by 3 & 4 Wm. 4, c. 94, ss. 13 &  
14. Secondly, that the further affidavit under  
the new order 68, "showing that the matter of  
the proposed amendment is material, and could  
not, with reasonable diligence, have been  
sooner introduced," had not been made by the  
solicitor, as required by the new order 69.

And, thirdly, that reasonable diligence had  
not been used. They cited *Phillips v. Goding*,  
1 Hare, 40; *Daniel's Chancery Practice*, Mr.  
Headlam's edition, vol. 1, p. 391; *Lloyd v.*  
*Wait*, 4 Myl. & Cr. 257; *Smith v. Webster*, 3  
Myl. & Cr. 244; and in reply, *Winnall v.*  
*Featherstonehaugh*, 9 Jur. 1054 (and 31 L. O.  
199.)

Mr. James Parker, and Mr. Freeling,  
for Christ's Hospital, urged—First, that as  
more than six weeks had elapsed since suffi-  
cient answer to their bill had been put in, the  
Master had no power to grant the required  
leave; and that therefore it became necessary  
to apply specially to the court. *Lloyd v. Wait*,  
(supra); *Haddelsen v. Necille*, and *Strickland v.*  
*Strickland*, 4 Beav. 28, 146; *Wimborne Union*  
*v. Massop*, 7 Beav. 309; *Dean v. Hickinbotham*,  
4 Hare, 302; *Matchitt v. Palmer*, 10 Sim.  
241; *Bertolacci v. Johnstone*, 2 Hare, 632;  
*Attorney-General v. Fishmonger's Company*, 4  
Myl. & Cr. 1. Secondly, that the courts had  
determined not to give the New Orders retro-  
spective effect, if parties would thereby be de-  
prived of any advantage, they might have  
gained; and thus the plaintiffs, though they  
had applied under the New Orders, would not  
be prejudiced. Under the old practice, the  
affidavits required by the 13th and 15th orders  
of 1828, as amended in 1831, and upon which  
these New Orders are based, were constantly  
made by the managing clerks. [Mr. Bethell.  
"Only with consent."] As to the spirit in  
which the New Orders are interpreted, they  
cited, *Feltham v. Clarke*, *Lowell v. Blew*, and  
*Routledge v. Gibson*, 13 Sim. pp. 491, 492,  
493, (31 L. O. 157); *Glover v. Lowell*, and  
*Tucker v. Scudamore*, 9 Jur. 1054 and 1070;  
*Spencer v. Allen*, (31 L. O. 157,) 15 Law Jour.  
31. Thirdly, that the delay had been satisfac-  
torily explained.

Mr. *Blount*, for the Attorney-General, was understood to have been favourable to the plaintiffs in the court below, but did not oppose the present appeal.

The Lord Chancellor was of opinion, that the application for leave to amend ought, in the first instance, to have been made to the Master. The 13th and 15th Orders of 1828, as amended in 1831, have been abrogated by the 1st, and replaced by the 67th and 68th of the New Orders; but the 13th and 14th sections of the act above cited, transferring the jurisdiction of the court to the Master's office, and reserving only the right of appeal, have not been contravened by any order of the Court of Chancery, under the power reserved to it in the said act; therefore they continue in full force. On the second point, his lordship was of opinion, that an affidavit by the managing clerk did not dispense with the further affidavit required from the solicitor, by the 68th Order; the words of the 69th Order are explicit. The reasonableness of the delay need not be investigated in the present case.

The Vice-Chancellor's Order discharged with costs; those of the Attorney-General to be costs in the cause. Amendments to be expunged.

*Christ's Hospital v. Grainger*, 17th, 18th, and 24th of January, 1846.

[The affidavit of the solicitor *alone*, under these orders, is not always sufficient. In *Attorney-General v. Corporation of Plymouth*, the Master of the Rolls required such affidavit to be corroborated by that of the managing clerk; and this decision was confirmed by the Lord-Chancellor, on appeal, on the 20th of December last.—REPORTER.]

#### Rolls Court.

##### BILL, DISMISSAL OF.—REPLICATION.

*If after notice of motion to dismiss for want of prosecution, the plaintiff, in answer to the motion, undertakes to file a replication, the proper course is for the motion to stand over till the next seal, at which time, if replication have not been filed, the court will make the order.*

THE answer in this case was filed the 5th of April, 1845, since which no proceedings had been taken in the cause, and a motion was now made to dismiss the bill for want of prosecution; in answer to which the counsel undertook to file replication.

The Master of the Rolls said the order might be made at once, giving the defendant the costs of the motion, but the safer course would be, to let the motion stand over till the next seal, so as to give the plaintiff the opportunity of fulfilling his undertaking, and then if no replication should be filed, the bill might be dismissed.

*Young v. Quinsey*. January 12, 1846.

\* The names of the reporters for the Legal Observer will be stated at the close of the volume.

##### SERVICE OF SUBPENA ON PARTY OUT OF JURISDICTION.—CONSTRUCTION OF ORDER 33, ARTICLES 1, 2.

*The court may allow subpoena to be served on a party out of the jurisdiction, in any part of the country in which he may be residing. Form of the order.*

APPLICATION was made in this case for leave to serve subpoena on a defendant who was residing within the precincts of Holyrood.

Mr. *Moxon*, for the motion, submitted, that the order should extend to service beyond the precincts.

The Master of the Rolls said, he would make the order for service in any part of Scotland. The order also should be for the defendant to appear within eight days after service of the subpoena, and to answer within a month.

*Blenkinsop v. Blenkinsop*.<sup>a</sup> January 29, 1846.

#### Vice-Chancellor of England.

##### PERSONS OUT OF THE JURISDICTION.—TRaversing NOTE.

IN this case an appearance had been entered for a defendant resident in Ireland, under the 4 & 5 Wm. 4, c. 82.

Mr. *Tyrrell* now moved for an order to file a traversing note, in the same manner as if the party had been within the jurisdiction. He cited *Godson v. Cook*, 7 Sim. 519.

The Vice-Chancellor made the order.

*Markath v. Williams*. Dec. 1845.

##### ENLARGING PUBLICATION.—NEW ORDERS.

*The court refused to enlarge publication, even to a day which could not postpone the hearing of the cause, where there had been much delay on the part of the defendant in the earlier stages, and a long period of unexplained delay in the examination of his witnesses, before publication passed.*

THIS was an application to enlarge publication, under the following circumstances:—The replication was filed on the 17th of January, 1845. On the 11th of October the plaintiff examined his witnesses, under a commission. But the defendant, though he had joined in the commission, did not examine any witnesses. On the 18th of November, publication was enlarged by consent, to the 19th of January. On the 20th of January the defendant applied to the Master for a further enlargement of publication. But the Master held, that his jurisdiction had expired. The application was supported by an affidavit as to the materiality of the evidence, and in explanation of the delay. It stated, that up to the beginning of October, 1845, the defendant was unable to go into the examination of his witnesses, in consequence of certain documents having been mislaid, which, however, were at that time found, and had been used by the plaintiff in the examination of his witnesses, on the 11th of that month. The affidavit stated

<sup>a</sup> Ex relations.

also, that in the latter part of December last, the defendant had been unable to attend to this subject, from the pressure of railway business; and that though his interrogatories had been filed on the 12th of January, he was unable to get an appointment from the examiner till the 7th of February. The time to which he sought to have publication enlarged, was the 14th of February, before when it was clear that the cause could not possibly come on to be heard. It appeared that two attachments had been issued against the defendant, and he had procured the time for answering to be three times enlarged, before the answer was obtained. But on the other hand, the plaintiff had allowed the time from January, 1845, till the 17th of July, to pass between the filing of the answer and the replication.

Mr. J. Parker and Mr. Moson, for the application, cited *Carr v. Appleyard*, 2 M. & C. 476; Anon. 5 Bea. 92.

Mr. Bethell and Mr. Rolt, contra, cited *Winnall v. Featherstonehaugh*, Sup. p. 199; which they said had been recognized by the Lord-Chancellor in *Christ's Hospital v. Grainger*, 10 Jur. 37.

The Vice-Chancellor, after noticing that the 112th and 113th of the New Orders clearly had as their object to accelerate the time of publication, said, Then the question here was, whether a fit case was brought forward, making it judicially right to relax the strict rigour of the rule. Now it really seemed to him that this defendant was the personification of delay. And if there was a delay on the plaintiff's part, in putting in his replication, that gave the defendant plenty of time to prepare. Then as to the pressure of railway business, there was no satisfactory explanation of why nothing was done before that pressure arose. There were cases where it might be right to give time, on an unforeseen pressure. But here it might be foreseen that it would come at last, like a thunder storm. A person could not be allowed to go on putting off all things to the last, and then rely upon the pressure of business as an excuse for his antecedent delay. He therefore thought this case should be a monument to others of the consequences of such a course, and should dismiss the motion with costs.

*Daniel v. Hill*. January 24, 1846.

### Queen's Bench.

(Before the Four Judges.)

#### PLEADING.—ASSUMPSIT.—ALLEGATION OF REQUEST.

*On a general promise to do a certain act on request, or within a reasonable time after request, the declaration must show that a request has been made, unless circumstances are shown which render the performance of the contract impossible, in which case the allegation of request becomes unnecessary.*

*A declaration for breach of promise of marriage alleged a promise to marry within a reasonable time after request; and that the*

*defendant, after making the promise, had married another person, not stating she was then alive, and not alleging that any request to marry had been made by the plaintiff. The defendant pleaded that no request had been made.*

*Held, the declaration was good, and the plea bad. The contract must be taken with reference to the feelings and intentions of the parties at the time they entered into the contract, and the defendant, being shown to have married another person, thereby committed a breach of the contract, and dispensed with the necessity of an allegation of request.*

THIS was an action of assumpsit for breach of promise of marriage. The declaration alleged that in consideration that the plaintiff would marry the defendant, the defendant promised to marry the plaintiff *within a reasonable time after request*. The declaration went on to allege, that the plaintiff hath been, and still is ready and willing to marry the defendant, yet the defendant, disregarding his said promise, after the making thereof, wrongfully and injuriously married a certain other person, contrary to his said promise. The defendant pleaded that he had not been requested to marry the plaintiff. To this plea there was a demurrer and joinder.

Mr. Peacock in support of the demurrer.

The declaration alleges that the defendant, after promising to marry the plaintiff, married another person. The defendant has thereby put it out of his power to perform his agreement, and therefore, by his own conduct, has dispensed with the necessity of a request before the action was brought. In *Harrison v. Cage*,<sup>a</sup> it was held, that in an action on a promise to marry, a declaration which shows that the defendant has married another person need not state a request. The defendant could not perform his promise without rendering himself liable to an indictment for bigamy, and as soon as he has voluntarily rendered himself incapable of performing his contract, a right of action immediately attaches to the plaintiff. The same principle has been laid down by the courts in several cases, *Bondell v. Parsons*,<sup>b</sup> *Ford v. Tiley*.<sup>c</sup>

Mr. Butt, contra.

The contract alleged in the declaration is not in the general form to marry on request, but to marry within a reasonable time after request. The request then is in the nature of a condition precedent, and being a necessary allegation, the plea properly puts that fact in issue. In *Harrison v. Cage*,<sup>a</sup> the declaration alleged that the woman whom the defendant had married was then alive, which makes a material difference, because for any thing that appears on this declaration, the defendant might still have been ready and willing, on request, to perform his contract. The court will not assume that the woman is alive, and the rule of

<sup>a</sup> 1 Lord Raym. 386. <sup>b</sup> 10 East. 359.

<sup>c</sup> 6 B. & C. 325. <sup>d</sup> 1 Lord Raym. 386.

pleading is, that there is no presumption in favour of life, but on the contrary, the fact must distinctly be made to appear on the face of the pleadings. *Holmes v. Kerrison*,<sup>c</sup> *Dayrell v. Hoare*.<sup>f</sup>

Mr. Peacock in reply.

A general promise to marry, or to marry on request, and a promise to marry within a reasonable time after request, amount to the same thing, because in each case a request is necessary, unless it has been dispensed with. Here the state of things and the feelings of the parties which existed at the time the contract was made, have been totally changed by the conduct of the defendant, and therefore a request became unnecessary.

Lord Denman, C. J., it appears to me, that we must look at this case with a view to the feelings and intentions of the parties at the time they entered into the contract; and those intentions and feelings appear to me to have been the same upon both sides. Both these parties contracted with each other to marry in the state and condition in which they then were. If either of these occasions a condition of things, which renders performance of the promise impossible, that party so far dispenses with the conditions of the contract, by making it impossible to be performed, and in that way, at once allows the remedy of the other side to arise and become available. It is not necessary to consider how far any other contract may be analogous to the present, for it is impossible not to see that the intention of the parties to this particular contract so far attaches upon the contract itself; then, when one of them married, and thus rendered the performance of the contract impossible, the necessity was dispensed with, of any request to perform what would otherwise have been a condition precedent. This seems to me to be the true construction of the contract; and as the plaintiff had a right of action against the defendant, on a breach of the contract, and as the defendant, by putting himself out of a condition to perform the promise, did himself commit a breach of the contract, he at once enabled the plaintiff to bring an action.

Mr. Justice Patteson.—The only difficulty I have felt in this case, arose from the precise form of the allegations in the declaration. The promise is here alleged as a promise to marry, *within a reasonable time after request*. If it had been a promise to marry generally, or on request, or within a reasonable time, I should have at once have thought it sufficient, because the man by marrying some other woman, put it out of his power to perform the promise he had made. But, upon considering the case, I do not think that any real distinction exists between a promise to marry within a reasonable time after request, and a promise to marry on request; for the parties must be taken in a contract of this kind, to contract with reference to the situation in which they then were. Now that condition

was put an end to by the defendant. It is distinctly averred that the defendant had married another woman, and after such an allegation it is not important to show that the other person is living, for the breach of contract is complete upon the marriage of the defendant with another woman.

Mr. Justice Coleridge.—I am of opinion that the declaration is good, and that the plea is bad, and for the reasons already stated. It is necessary to consider what is the meaning of the promise. It is, that the defendant undertook to marry the plaintiff within a reasonable time after request. If the defendant disables himself from the power of performing such a promise, two consequences follow:—first, he thereby dispenses with the necessity of the performance of the condition precedent; and the breach on his part being complete, it is not necessary to consider how long the lady he has married may live, or whether she is still alive, for the contract being broken, the right of action at once attaches. The declaration is good without alleging a request, and the plea is bad for setting up as answer a condition which, on account of the conduct of the defendant himself, need not be performed.

Mr. Justice Wightman concurred.

Judgment for the plaintiff

*Short v. Stowe*. Q. B., Hilary Term, 1846.

#### Queen's Bench Practice Court.

#### SCIRE FACIAS UPON JUDGMENTS ABOVE TWENTY YEARS OLD.

*Whether or not a scire facias is generally allowable to revise a judgment which is more than 20 years old, the court will certainly allow it to go, if payments appear to have been made within 20 years.*

In Michaelmas Term, 1825, judgment had been entered up against the defendants for

\* The statute 3 & 4 Will. 4, c. 27, s. 40, enacts, that "no action, or suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime some part of the principal money, or some interest thereon shall have been paid, or some acknowledgment of the right thereof shall have been given in writing, signed by the person to whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case, no such action, or suit, or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given." That this section is not confined to judgments given to secure money charged upon land, see *Farran v. Beresford*, 10 Cl. & F. 309; *Farrell v. Gleeson*, 11 Cl. & F. 702.

<sup>c</sup> 2 Taunt. 323. <sup>f</sup> 12 Adol. & Ellis. 356.

79981. to secure to the plaintiff the payment of an annuity of 4281. Payments on account of the annuity had been made up to 1827, but nothing having been paid since, a rule was obtained in Michaelmas Term, 1845, on behalf of the personal representative of the plaintiff (who died since the judgment was entered up), calling upon the defendant to shew cause why a scire facias should not issue to revive the judgment; against which

*Hoggins* now shewed cause, and contended that there was no instance in which a scire facias had been allowed where the judgment was more than twenty years old. In Chitt. Archb. Prac. vol. 2, p. 832, it is stated, that a "scire facias on a recognizance, or to revive a judgment, cannot be sued out after twenty years;" the reason for which is, that after that period the judgment is presumed to be satisfied. Therefore, had this been the case of a judgment *simpliciter*, and not of one given as a collateral security for the payment of sums at different times, there could be no doubt. That it has been so given, however, makes no difference; after such a lapse of time the court will not interfere, but will leave the claimant to an action upon the annuity deed, on the trial of which the plaintiff will be at liberty to prove that payments have been made on account, within twenty years.

*Swann*, contra. There is no rule against the allowance of a scire facias when the judgment be more than twenty years old. In the present case the court being informed, upon affidavit, that some payments have been made within twenty years, the matter is free from doubt. But had there been no payments, the writ must go; and the defendant would not be prejudiced; for to the declaration in scire facias he might plead payment, and (if no payments have been made within twenty years), rely on the presumption that the debt has been satisfied.

*Williams, J.* Whether there be or be not any inflexible rule against the allowance of a scire facias to revive a judgment which is more than twenty years old, it is not now necessary for me to consider, and still less to decide; for I think that, even supposing such a rule to exist, payments on account within the twenty years would exempt this case from its operation.

Rule absolute.<sup>b</sup>

*Williams v. Welch and another.* Hilary Term. January 17th, 1846.

### Exchequer.

JUDGMENT AS IN CASE OF A NONSUIT. — PEREMPTORY UNDERTAKING.

*An affidavit in answer to a rule for judgment as in case of a nonsuit, should state some*

*definite fact as an excuse for not proceeding to trial, and where it was sworn that the plaintiff had not proceeded to trial, because he had been in hopes of settling the action, the affidavit was held insufficient, as it did not state a negotiation for that purpose.*

*E. James* showed cause against a rule for judgment as in case of a nonsuit, on an affidavit made by the plaintiff's attorney, which stated, that the plaintiff had not proceeded to trial according to his notice, because he had been in hopes of effecting a settlement of the action without incurring the expense of a trial. It was submitted that this was sufficient to induce the court to discharge the rule on a peremptory undertaking.

*E. H. Woolrych*, contra, contended, that the affidavit was insufficient, as it ought to have stated that there had been a negotiation for a settlement.

*Alderson, B.* That is so, no doubt. The affidavit may only refer to something passing in the deponent's mind; it should have stated definitively the fact of a negotiation. The plaintiff may amend his affidavit.

*Winnah v. Denley and another.* Hilary T., 1846.

### CHANCERY SITTINGS.

AT LINCOLN'S INN.

*Sittings after Hilary Term, 1846.*

#### Lord Chancellor.

Wednesday	Feb. 11	{ The 1st Seal—Appeal Motions.
Thursday	. . . 12	{ Appeals.
Friday	. . . 13	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday	. . . 14	{ Appeals.
Monday	. . . 16	
Tuesday	. . . 17	
Wednesday	. . . 18	
Thursday	. . . 19	{ (Petition-day) Unopposed Petitions and Appeals.
Friday	. . . 20	
Saturday	. . . 21	
Monday	. . . 23	
Tuesday	. . . 24	{ Appeals.
Wednesday	. . . 25	{ The 2nd Seal—Appeal Motions.
Thursday	. . . 26	{ Appeals.
Friday	. . . 27	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday	. . . 28	{ Appeals.
Monday	March 2	
Tuesday	. . . 3	
Wednesday	. . . 4	
Thursday	. . . 5	{ (Petition-day) Unopposed Petitions and Appeals.
Friday	. . . 6	
Saturday	. . . 7	
Monday	. . . 9	
Tuesday	. . . 10	{ Appeals.
Wednesday	. . . 11	{ The 3rd Seal—Appeal Motions.
Thursday	. . . 12	{ Appeals.

<sup>b</sup> By a general rule of all the courts (R. H. 2 Will. 4, reg. I. s. 79) it is ordered that "a scire facias to revive a judgment more than ten years old shall not be allowed without a motion for that purpose in term, or a judge's order in vacation; nor if more than fifteen, without a rule to show cause."



Friday . . . 15	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . 16	{ Appeals.
Monday . . . 16	
Tuesday . . . 17	
Wednesday . . . 18	
Thursday . . . 19	{ (Petition-day) Unopposed Petitions and Appeals.
Friday . . . 20	
Saturday . . . 21	
Monday . . . 23	
Tuesday . . . 24	{ Appeals.
Wednesday . . . 25	
Thursday . . . 26	{ The 4th Seal—Appeal Motions.
Friday . . . 26	{ The General Petition-day.

*Note.*—Such days as his Lordship is occupied in the House of Lords are excepted.

## Master of the Rolls.

AT THE ROLLS.

Wednesday Feb. 11	Motions.
Thursday . . . 12	{ Unopposed Petitions, and Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 13	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday . . . 14	
Monday . . . 16	{ Petitions—The unopposed first.
Tuesday . . . 17	
Wednesday . . . 18	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Thursday . . . 19	
Friday . . . 20	
Saturday . . . 21	
Monday . . . 23	{ Petitions—The unopposed first.
Tuesday . . . 24	
Wednesday . . . 25	Motions.
Thursday . . . 26	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 27	
Saturday . . . 28	
Monday . . . March 2	
Tuesday . . . 3	{ Petitions—The unopposed first.
Wednesday . . . 4	
Thursday . . . 5	{ Pleas, Demurrers, Causes, Further Directions and Exceptions.
Friday . . . 6	
Saturday . . . 7	
Monday . . . 9	
Tuesday . . . 10	{ Petitions—The unopposed first.
Wednesday . . . 11	
Thursday . . . 12	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 13	
Saturday . . . 14	
Monday . . . 16	
Tuesday . . . 17	{ Petitions—The Unopposed first.
Wednesday . . . 18	
Thursday . . . 19	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Friday . . . 20	
Saturday . . . 21	
Monday . . . 23	
Tuesday . . . 24	{ Petitions—The Unopposed First.
Wednesday . . . 25	

Thursday . . . 26 Petitions.

Short Causes and Consent Causes every Tuesday at the sitting of the court.

*Notice.*—Petitions must be presented, and copies left with the secretary, on or before the Saturday preceding the Tuesday on which it is intended they should be heard. Those requiring service must be presented on or before the Friday preceding.

## Vice-Chancellor of England.

Wednesday Feb. 11	The 1st Seal—Motions.
Thursday . . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . 13	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday . . . 14	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday . . . 16	
Tuesday . . . 17	
Wednesday . . . 18	
Thursday . . . 19	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Friday . . . 20	
Saturday . . . 21	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday . . . 23	
Tuesday . . . 24	
Wednesday . . . 25	
Thursday . . . 26	{ The 2nd Seal—Motions. Pleas, Demurrers, Exceptions, Causes, and Fur. Directions.
Friday . . . 27	
Saturday . . . 28	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Monday . . . March 2	
Tuesday . . . 3	
Wednesday . . . 4	
Thursday . . . 5	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Friday . . . 6	
Saturday . . . 7	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Monday . . . 9	
Tuesday . . . 10	
Wednesday . . . 11	
Thursday . . . 12	{ The 3rd Seal—Motions. Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . 13	
Saturday . . . 14	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Monday . . . 16	
Tuesday . . . 17	
Wednesday . . . 18	
Thursday . . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . 20	
Saturday . . . 21	
Monday . . . 23	
Tuesday . . . 24	{ The 4th Seal—Motions.
Wednesday . . . 25	
Thursday . . . 26	The General Petition-day.

Vice-Chancellor Knight Bruce.

Wednesday	Feb. 11	The 1st Seal—Motions.
Thursday	. . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday	. . . 13	{ (Petition-day) Petitions and Causes.
Saturday	. . . 14	Short Causes and Causes.
Monday	. . . 16	Bankrupt Petitions.
Tuesday	. . . 17	{ Pleas, Demurrers, Causes and Fur. Dirs.
Wednesday	. . . 18	{ Bankrupt Petitions and ditto.
Thursday	. . . 19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	. . . 20	{ (Petition-day) Petitions and Causes.
Saturday	. . . 21	Short Causes and Causes.
Monday	. . . 23	Bankrupt Petitions.
Tuesday	. . . 24	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	. . . 25	The 2nd Seal—Motions.
Thursday	. . . 26	{ Pleas, Demurrers, Exceptions, Causes and Further Directions.
Friday	. . . 27	{ (Petition-day) Petitions and Causes.
Saturday	. . . 28	Short Causes and Causes.
Monday	March 2	Bankrupt Petitions.
Tuesday	. . . 3	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	. . . 4	Bankrupt Petitions & Ditto.
Thursday	. . . 5	{ Pleas, Demurrers, Exceptions, Causes and Further Directions.
Friday	. . . 6	{ (Petition-day) Petitions & Causes.
Saturday	. . . 7	Short Causes and Causes.
Monday	. . . 9	Bankrupt Petitions.
Tuesday	. . . 10	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	. . . 11	The 3rd Seal—Motions.
Thursday	. . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	. . . 13	{ (Petition-day) Petitions & Causes.
Saturday	. . . 14	Short Causes and Causes.
Monday	. . . 16	Bankrupt Petitions.
Tuesday	. . . 17	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	. . . 18	Bankrupt Petitions & Ditto.
Thursday	. . . 19	{ Pleas Demurrers, Exceptions, Causes, and Further Directions.
Friday	. . . 20	{ (Petition-day,) Petitions & Causes.
Saturday	. . . 21	Short Causes and Causes.
Monday	. . . 23	Bankrupt Petitions.

Tuesday	. . . 24	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	. . . 25	The 4th Seal—Motions.
Thursday	. . . 26	(The General Petition-day)

Vice-Chancellor Stigam.

Wednesday	Feb. 11	{ The 1st Seal—Motions and Causes.
Thursday	. . . 12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	. . . 13	(Petition-day) Ditto.
Saturday	. . . 14	{ Short Causes, Petitions (unopposed first,) and Causes.
Monday	. . . 16	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday	. . . 17	{ Ditto.
Wednesday	. . . 18	{ Ditto.
Thursday	. . . 19	{ Ditto.
Friday	. . . 20	(Petition-day) Ditto.
Saturday	. . . 21	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	. . . 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	. . . 24	{ Ditto.
Wednesday	. . . 25	The 2nd Seal—Motions and Petitions.
Thursday	. . . 26	{ Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday	. . . 27	(Petition-day) Ditto.
Saturday	. . . 28	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	March 2	{ Pleas, Demurrers, Exceptions, Further Dirs. and Causes.
Tuesday	. . . 3	{ Ditto.
Wednesday	. . . 4	{ Ditto.
Thursday	. . . 5	{ Ditto.
Friday	. . . 6	(Petition-day) Ditto.
Saturday	. . . 7	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	. . . 9	{ Pleas, Demurrers, Exons. Further Directions, and Causes.
Tuesday	. . . 10	{ Ditto.
Wednesday	. . . 11	{ The 3rd Seal—Motions and Causes.
Thursday	. . . 12	{ Pleas, Demurrers, Exceptions, Further Directions, and Causes.
Friday	. . . 13	(Petition-day) Ditto.
Saturday	. . . 14	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	. . . 16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	. . . 17	{ Ditto.
Wednesday	. . . 18	{ Ditto.
Thursday	. . . 19	{ Ditto.
Friday	. . . 20	(Petition-day) Ditto.
Saturday	. . . 21	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday	. . . 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	. . . 24	{ Ditto.

Wednesday . . . 25 } The 4th Seal—Motions and Causes.  
 Thursday . . . 26 The General Petition-day.

## BUSINESS OF THE COURTS.

### Queen's Bench.

This Court will, on Monday the 9th February next, and the five following days, hold Sittings, and will proceed in disposing of the business in the *Crown Paper*, the *New Trial Paper*, and the *Special Paper*, and giving judgment in cases then pending.

### Common Pleas.

This court will, on Monday, the 23rd of February next, hold a Sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the court.

### Exchequer.

This court will hold Sittings, and will proceed in disposing of the business pending in the *Special Paper*, and the *New Trial Paper* on the 6th February, and also on Saturday the 7th of February, and on Monday the 9th of February, and the five following days, and on Monday the 16th of February, and the five following days.

## CIRCUITS OF THE JUDGES.

(*Mr. Justice Cresswell will remain in Town.*)

SPRING CIRCUITS. 1846.	HOMER.	MIDLAND.	OXFORD.	NORFOLK.	NORTH-YORK.	N. WALES.	S. WALES.	WESTERN.
Commission Days.	Lord Denman B. Alderson	L.C.J. Tindal J. Colman	LCB Pollock B. Platt	B. Parke J. Maule	J. Patteson J. Coleridge	J. Williams	J. Wightman	B. Rolfe J. Erie
Mon. Feb. 16					Lancaster			
Thursday 19					Appleby			
Saturday 21					Carlisle			
Wednesday 25					Newcastle			
Thursday 26					[ & Tn		Swansea	
Friday 27	Hartford							
Saturday 28			Reading					Winchester.
Mon. Mar. 2		Northamp.			Durham			
Tuesday 3	Chalmers.	[ton		Aylesbury				
Thursday 5			Oxford					
Friday 6		Oakham						
Saturday 7		Lincoln		Bedford	York & C.	Welchpool		Salisbury
Monday 9	Malden	[City						
Tuesday 10			Worcester					
Wednesday 11			[ & City	Huntingdon			Cardigan	
Thursday 12		Nottingham				Bala		
Friday 13		[ & Tn		Cambridge				Dorchester
Saturday 14						Carmarvon		
Monday 16	Lewes	Derby					Carmar-	
Tuesday 17			Stafford				[then	Exeter & C
Wednesday 18				Bury St. Ed.		Beaumaris		
Friday 20		Leicester.						
Saturday 21		[B.			Liverpool	Ruthin	Brecon	
Monday 23	Kingston							
Tuesday 24		Coventry		Norwich &				
Wednesday 25		Warwick	Shrewsbury	[city		Mold	Prestelgn	Bodmin
Saturday 28						Chester	Chester	
Monday 30			Hereford					Taunton
Tuesday 31								
Wed. April 1			Monmouth					
Saturday 4			Glo'ester & C.					

## PROCEEDINGS IN PARLIAMENT.

### CONTROVERTED ELECTIONS.

THE Speaker of the House of Commons, pursuant to the 7 & 8 Vict. c. 103, has appointed Lord Granville Somerset; Sir George Grey; Viscount Sandon; James Loch, Esq.; John Wilson Patten, Esq.; and The O'Connor Don, to be members of the General Committee of Elections.

### LAW BILLS.

Connected with the Corn Law Bill, an alteration, dictated equally by policy and justice, will be effected in the *Poor Law* system, by giving a settlement to those who have passed a certain number of years of "industrial" service, and preventing their removal to their original parish.

Sir James Graham has intimated his in-

tention of bringing in a bill by way of supplement to the *Small Debts Act*, in relation to actions under 20*l.*, with the engrafted clauses for the enlargement of *local courts*. Some bill of this sort, we stated long ago would be requisite. Though in a few places judges have been appointed, the act has really not been carried into effect. We hope an opportunity will now be afforded of repairing the mischief of the last two sessions.

### THE EDITOR'S LETTER BOX.

WE think that the purpose of W. W. will be best attained by reading Mr. Bagley's *Practice*, and Mr. Smirke's last edition of *Roscoe's Nisi Prius*.

A correspondent is informed that no regulation relative to the examination of articled clerks in classics has been made.

# The Legal Observer.

SATURDAY, FEBRUARY 14, 1846.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## BUSINESS ARRANGEMENTS OF THE LAW COURTS.

THE term which has just ended has afforded fresh evidence of the necessity for some changes in the business arrangements of the Common Law Courts, or rather, we ought to say, in that one of them in which the amount of business, or the peculiar nature of it, occasions a serious pressure on the time of the court. It hardly matters in what way the Court of Common Pleas arranges its business—a decorous gentleness seems fitted to preside over its labours, and the great satisfaction with which its decisions are received by the profession is, perhaps, not too dearly paid for by the slowness with which the causes come to a trial and those decisions are made. Speed is not required, and the habit of taking things as they come may safely be indulged in. There is no necessity for any studied particularity as to the mode of arranging business, which, without any injury to any one, may be safely left to arrange itself, and the exclusiveness which this really powerfully constituted court has resolved to adopt as to those who practise before it, renders its proceedings less and less of general interest. It may, therefore, be dismissed from consideration, so far as the subject of the present article is concerned.

In the Court of Exchequer the public have an interest in the mode in which the dispatch of business has been arranged, but that business, though large, is not overwhelming, and the practical working of the existing system is sufficiently satisfactory.

In the Court of Queen's Bench things are on a very different footing. The business of that court is almost unmanageable. In private suits it has even more business

than the Exchequer, while the cases of a *quasi* criminal nature, those in which the Queen's name is used as that of a party litigant are quite as numerous as those in which private rights alone are discussed. It may, therefore, be fairly said to have more than double the business of either of the other law courts. The fact does of itself create an imperative necessity for the adoption of some rules of a clear and undoubted sort, the stringency of which should never be relaxed for any reason less imperious than of that of inevitable necessity. Some advance to this state of things has already been made, but any step short of one which attains the actual object itself leaves matters in a very objectionable condition.

The judges of this court promulgated at the end of Michaelmas Term, their resolution not to allow what has come to be technically known as "a list" of new trials to be moved for after the first four days of the ensuing term. The Attorney-General noticed the declaration with an amusing simplicity, which, under any other circumstances and towards any other persons, might have been mistaken for a good humored quiz: he said, that it was not at all probable that more than four days could be required for motions for new trials in cases occurring only during the sittings. Still, even under these circumstances, if there had existed the possibility of getting "a list" allowed, it is by no means certain that one would have been required. The habits and tendencies of men are towards delay, and wherever the indulgence of delay is tolerated, there are few, very few individuals who will not take advantage of it. The motions for new trials occurring in cases tried at the sittings after last Michaelmas Term were, with very few exceptions, made on the fourth day of Hilary

Term. Had these applications been a little more numerous, the court must have sat to a late hour on the Thursday, or (notwithstanding its own rule) must have allowed "a list" to be made, or must have refused the parties leave to move because they came too late. No one of these courses would have been agreeable—yet one of them must have been adopted, and any one would have been productive of considerable inconvenience, perhaps of great dissatisfaction. The circumstance should be a warning. The fact that comparatively few motions were made, and yet that many of those motions were postponed to the last practicable moment, ought to decide the judges to take a step more marked and vigorous than any that has yet been taken. The rule stated in Michaelmas Term will be wholly ineffective at the beginning of Easter Term. To the long sittings after Hilary Term are to be added the Spring Assizes, and from those conjointly will come so many cases, that should there be only the usual number of two or three motions for new trials on the first and second days of the term, the third and fourth days will not afford time enough for the rest of the cases to be moved, and the alternative of a very late sitting, or of a refusal to hear such motions will present itself. This alternative ought, if possible, to be avoided. The court can only with certainty prevent its occurrence by a distinct announcement, that the names of all the cases intended to be moved must be left with the clerk of the rules on the morning of the first day of term, and that the names of those cases will be called over in the order in which they have been set down. It may be quite true that those who delay to the last deserve to suffer, but the proneness of man towards delay should be remembered,—any possible excuse for it should be removed, and the punishment that ought not to be spared, if the duty to inflict it became inevitable, should by every possible means be avoided. That punishment is in this case of such a nature, that judicial virtue must be supposed to be most desirous to prevent the occasion for it. The Court of Exchequer will, in all probability, require the adoption of a rule similar to what we have thus recommended for the Court of Queen's Bench, for in Easter and Michaelmas Terms even that court has most frequently been compelled to resort to the irregular and delay-encouraging expedient of "a list."

In the regularity with which the days assigned to particular papers have during the last term been preserved, too great

praise cannot be given to the court, and, except that some unusually heavy causes have occurred, (*Gosling v. Veley* for instance,) the progress in particular papers has been considerable. Still the enlarged rules must now be numerous. Nor are they likely to be reduced in number, unless some check is put to the practice of allowing every man who is above the rank of a petty tradesman, to apply for a criminal information instead of compelling him to resort to what in former times was truly called, in more recent times continues by force of habit and courtesy to be but not truly called, "the ordinary remedy," that of proceeding by way of action or indictment. The last day of the just ended term exhibited a most unquestionable instance of the erroneous facility with which rules for criminal informations are granted. Nearly three-fourths of the day were wasted in discussing such a rule in a case (the *Queen v. Jesse Hall*) where no such rule ought ever to have been allowed. The parties concerned had squabbled with each other in the local papers and in local publications, and ought to have been left to local juries to have their differences settled. Their disputes certainly did not deserve that the dignity of the Court of Queen's Bench should be put into requisition to throw a grace over them, nor that the valuable time of the court be wasted upon them. The judges of that court must have been somewhat of that opinion, since at the end of a hearing of some hours "the court did not think fit to give any decision" at that moment, and in all probability never will give one. And yet such a case, so utterly unworthy of the "special interference," and the exercise of the "extraordinary jurisdiction" of the first court of law in the kingdom, was the actual cause of at least a score or more of honestly contested cases being tied up for two or three months to come. It is not every case of alleged libel that ought to be met by a criminal information. That is, (or ought to be,) as the law books call it, an "extraordinary remedy," only to be conceded where the pressure of time or the perverseness of grand juries, or the ignorance of all but the libelled and the libeller of the circumstances of the case, requires a mode of proceeding which the ordinary law has not provided. Modern practice has now made a criminal information one of the most ordinary of remedies, at least, for all people who claim the rank of gentlemen. Yet it was not intended for a distinctive mark of social rank, nor can resort to it be so fre-

NEWSPAPER

REMARKS

quently permitted without much public inconvenience. And—no such rule ought to be applied for in the Bail Court

Another matter that requires remedy, but which need only be glanced at here, for the parliament and not the court must provide that remedy—is the practice of bringing up to the court in term-time persons convicted of certain misdemeanours at the Assizes, or at the Central Court, or at the *Nisi Prius* sittings of this court. The excellent bill to enable persons as of right to move for a new trial, which the present Solicitor-General introduced into parliament last year, will, we hope, entirely abolish a practice which only occasions useless expense to the individual parties, and needless interruption to the other business of the court. The case of the *Queen v. Cooper*, in which the defendant was brought up on the last day but one of the term, and the time of the court wasted on a matter that could better have been disposed of at the assizes, while the facts were fresh in the mind of the judge who tried the case, was a flagrant instance of the folly of the present practice.

From one or other of the causes thus referred to, there is a fearful arrear of "rules" undisposed off in the Court of Queen's Bench. They no longer stand in the shape of a "peremptory paper," exposing the fact to the world, and haunting the sight of the learned judges who have tried in vain to get rid of them. That they do not exist in quite such large numbers as in former years, is owing to the circumstance that the "railway mania" of 1845 has affected legal as it has affected commercial proceedings. Nothing has been done in law that was not absolutely necessary to be done, and if people have not been more prudent than usual as to incurring legal liabilities, they have at least been less energetic in enforcing legal rights. The business of the law courts has unquestionably diminished—it may be questionable whether this is a sign of good or evil in the community, but at all events, to this rather than to any other cause is to be attributed the fact, that the arrears of business in this the greatest of our common law courts, is less formidable than in previous times.

## POINTS IN COMMON LAW.

### OPERATION OF THE STAMP ACTS ON RECEIPTS.

It has always seemed to us desirable that the attention of the profession should

be directed, as promptly as may be, to the decisions which occur from time to time in respect to the operation of the Stamp Laws, and we therefore take the earliest opportunity of referring to a case reported in the number of the Queen's Bench Reports, delivered during the last week,\* and which involves more than one point of practical importance.

In the case alluded to,<sup>b</sup> the plaintiffs sought to recover from a lessee in covenant, five quarters' rent due under a lease granted by one Marriott to the defendant, and the defendant pleaded, that he had paid the rent to his lessor (Marriott) before action, and without any notice of the plaintiff's title. Issue was taken on the fact of payment, and at the trial, the defendant in support of his plea proved, that Marriott being indebted to him in a sum secured by mortgage, exceeding the amount of the five quarters' rent, it was agreed between them that the amount of the five quarters' rent should be deducted from the mortgage debt, and Marriott thereupon handed the defendant a written paper signed by him, which was as follows:—

"Mr. Jones having written off the sum of 72l. 3s. 9d. from his mortgage debt, being five quarters' rent of his house, I hereby discharge the same rent to the 24th July, 1841.

(Signed) "T. W. MARRIOTT."

This paper was impressed with a 1l. stamp, with no denomination, but it appeared on the face of the instrument, by an indorsement of the stamp commissioners, that the stamp had been affixed on payment of a penalty, more than a month after the date of the instrument. The learned judge who tried the cause,<sup>c</sup> having allowed the document to be received in evidence, and the defendant having had a verdict on the plea of payment, the question on a motion for a new trial was, whether the instrument thus stamped was properly admitted?

Upon the part of the defendant three grounds were suggested, upon which the admission of the document in evidence might be supported.

1st, It was said, that the instrument in question was not a receipt; and this was sufficiently shown by the definition of a receipt given by the general Stamp Act.<sup>d</sup> Under the title "Receipt," was found these words:—"Receipt or discharge given for or upon the payment of

\* 5 Q. B. part 5.

<sup>b</sup> *Lucas and others, Executors of James Ross, v. Jones.*

<sup>c</sup> Patteson, J.

<sup>d</sup> 55 Geo. 3, c. schedule part 1, title "Receipt."

money." Here no money was paid, but Marriott agreed to set off one debt against another, 2ndly, It was contended, that even if the instrument could be construed as a receipt, it fell within the exemption in the Stamp Act, under the words, "Receipts or discharges indorsed or otherwise written upon, or contained in any deed or instrument whatever, duly stamped, acknowledging the receipt of the consideration money therein expressed," &c. The instrument in question, it was urged, had a stamp sufficient for an agreement and the receipt was for the consideration therein expressed. Lastly, it was argued, that the stamp on the instrument in question, amounting to 20s., which exceeded the highest receipt stamp, and the stamp thereon not being appropriated, the instrument was protected under section 10, which gives effect to a stamp not less in amount than the proper stamp, provided it be not specially appropriated to any other instrument.

On the part of the plaintiff it was answered:—

1st, That the instrument in question, according to the effect which the defendant sought to give it, was exactly described in the Stamp Act under the title "Receipt," by these words:—"And any note, memorandum, or writing, whatsoever, given to any person, for or upon the payment of money, whereby any sum of money, debt, or demand, therein specified, and amounting to 2l. or upwards, shall be expressed or acknowledged to have been paid, settled, balanced or otherwise discharged or satisfied, or which shall import or signify any such acknowledgment, shall be deemed and taken to be a receipt for a sum of money, of equal amount with the sum, debt, or demand, so expressed or acknowledged to have been paid, settled, balanced, or otherwise discharged or satisfied, within the intent and meaning of this schedule, and shall be charged with a duty accordingly." 2ndly, That the stat. 55 Geo. 3, c. 184, s. 10, did not apply; inasmuch as by stat. 35 Geo. 3, c. 55, ss. 8, 10, and 11, a receipt must be stamped either before it is executed, or within a month from that time.

The court (including *Patteson, J.*, who tried the cause) was against the defendant on all the points raised. An instrument referring to a settlement on a by-gone day might operate merely as an admission; but as between the defendant and Marriott this writing off the debt was to be considered as money. This, therefore, was a receipt or discharge given on the payment of money. The defence suggested under the 10th section might have arisen, if the 1l. stamp had been affixed before the receipt was executed, but here the stamp was improperly affixed, since by stat. 35 Geo. 3, c. 55, ss. 8 and 10, the stamp must be on the paper before it is used as a receipt, and though by section 11, the instrument may afterwards be

stamped on payment of certain penalties yet that must be done within a month, and here it was not so. Upon these grounds the rule was made absolute for a new trial.

## EXAMINATION OF SOLICITORS.

### APPOINTMENT OF EXAMINERS.

13th January, 1846.

WHEREAS, by an order made by the Right Honourable the Master of the Rolls, on the 13th day of January, 1844, it was, amongst other things, ordered that every person who had not previously been admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the statute 6 & 7 Victoria, c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching his fitness and capacity to act as a solicitor of the said court of Chancery; and that twelve solicitors of the same court, to be appointed by the Master of the Rolls in each year, be examiners for the purpose of examining and inquiring, touching the fitness and capacity of every such applicant for admission as a solicitor; and that any five of the said examiners shall be competent to conduct the examination of such applicant. Now, in furtherance of the said order, the Right Honourable the Master of the Rolls is hereby pleased to order and appoint that Robert Riddell Bayley, Edward Smith Bigg Thomas Clarke, John Coverdale, Alexander William Grant, John Swarbrick Gregory, George Herbert Kinderley, Edward Lawford, William Lowe, Thomas Metcalfe, Edward Leigh Pemberton, and Edward Rowland Fickering, solicitors, be examiners until the 31st December, 1846, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them), who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said court. And the Master of the Rolls doth direct that the said examiners shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said order of the 13th of January, 1844, and the regulations approved by his lordship, in reference thereto, and in no other manner and to no further extent.

## NOTES ON EQUITY.

## ANNUITY.—JUDICIAL CONFLICT.—CHANCELLORS PLUNKETT AND SUGDEN.

A GIFT of the *income* of property possessed by the testator carries the entire interest. That point was decided in *Elton v. Shephard*, 1 Bro. C. C. 534. So the gift of the *produce* of a residue was held to operate in the same way, passing the whole interest in such residue. *Phillips v. Chamberlayne*, 4 Ves. 51. In like manner the gift of the dividends of stock will pass the stock itself; *Page v. Leapingwell*, 18 Ves. 464; and as a result of these rules, if a testator directs an annuity to be purchased for a legatee, the legatee in such a case has his election to take the purchase money instead of the annuity. *Dawson v. Hearn*, 1 Russ. & Myl. 606. A gift of an annuity as part of the income of any particular property, passes a perpetuity on the annuity, that is, renders it a perpetual annuity, which upon the principle already unfolded, would be precisely equivalent to a gift of what would purchase such perpetual annuity. In the case of *Rawlings v. Jennings*, 13 Ves. 45, Sir William Grant so decided. In such cases the words *annuity* or *annual sum* are equivalent to the *corpus* of the property, out of which the payment is to issue. These plain principles being remembered, let us turn to a case, *Stokes v. Heron*, just reported by Messrs. Clark & Finnelly, vol. 12, part 2, p. 161, in which the present Lord Chancellor of Ireland appears to have miscarried in a matter truly determinable by the rules above explained.

The testator by his will, disposing of personality merely, directed, that whatever he should die possessed of should produce to his wife an annuity of 100*l.* per annum, and to each of his daughters 100*l.* per annum for themselves and *their children*; the said annuities, after the death of his wife, to be *equally divided among his three children*, William, Mary, and Julia; the residue of his property being bequeathed to his said son William. At the date of the will and of the testator's death, there were no children of the daughters, one of whom, Mary, died in the testator's lifetime, whereupon he made a codicil to his will, dividing her annuity between his two surviving children, William and Julia. He afterwards made another codicil in these words:—"And in case my son William shall die without leaving issue male, my will is, that *after the decease of my wife and my daughter Julia*, my remaining property shall then be divided," &c. The words in italics suggesting that the annuities given to the wife and daughter were for life only.

The question came in February 1841, before Lord *Plunkett*, then Chancellor of Ireland, who pronounced his decree, holding them to be perpetual annuities. But upon the advent of his present successor, Sir *Edward Sugden*, the defeated party applied for a re-hearing; and accordingly the cause was, in February 1842, re-argued, and in due course a decree was made, whereby Sir *Edward Sugden* reversed the decree of his predecessor. Under which circumstances an appeal was taken to the House of Lords, before whom the whole subject was very ably discussed in presence of Lords Brougham, Cottenham, and Campbell.

The appellants showed that wherever property is given to produce an annuity, the annuity is perpetual; and that was the case here. The difficulty which had misled Sir Edward Sugden, they alleged, arose from his opinion that the rule in *Wild's* case, 6 Rep. 17, did not apply to personality.\* He said, "As regards the gift to the daughters and their children, I have great doubts as to the possibility of applying the doctrine of *Wild's* case to personal property. The true construction of a gift to a father and his children is to construe it a gift to them as a class as joint tenants, as in *Oates v. Jackson*, 2 Str. 1172." The appellants contended that this was only true where the children could take by purchase, but not where the gift was to one who had not then any children.

The respondents, on the other hand, maintained, that Sir Edward Sugden was right in holding that the rule in *Wild's* case did not apply to personality. The Lords proceeded to give judgment.

Lord Brougham.—"It is said by Lord Chancellor Sugden, that Lord Plunkett laboured under a misapprehension of *Wild's* case. I must really in justice to that learned person, state that this is altogether a mistake; for he laboured under no misapprehension whatever. 'Here,' says Sir Edward, 'the gift is to them

\* The rule in *Wild's* case is, that if *A.* devise his lands to *B.* and to his children or issues, and he hath not any issue at the time of the devise, the same is an estate tail; and if that estate be not barred, the children may successively take. Now, in the case of personality, it would certainly be a benefit to the children to hold that the parent took an absolute interest, instead of a mere life interest. It would be a violence to strike out of the will the words in favour of the children. And as what would give an estate tail of real property, would, if applied to personality, give an absolute interest, the testator's intentions would be best effectuated by holding that the parent took a *quasi* estate tail in the personality, which would give him the absolute disposal of it, but which might lead to its being distributed among his children at his death.



and their children all in one sentence;’ but in *Wild’s* case he says, the gift was to one and his wife, and after their decease to her children.’ The mistake is Lord Chancellor Sugden’s, not Lord Chancellor Plunkett’s.”

Lord *Brougham* then enters into a very minute, elaborate, and critical examination of the rule in *Wild’s* case—exemplifying the propensity of his mind rather to display a mastery over the subtleties of legal metaphysics than to place his opinion on any broad, rational, intelligible foundation. The rule in *Wild’s* case, like the rule in *Shelly’s* case, has had more honour paid to it than it deserves. See how differently Lord *Cottenham* proceeds. He observed:—

“These annuities are to be considered as perpetuities, because the testator deals with them as being in existence and operative beyond the period of the lives of those who are first to enjoy them.”

We require no rule in *Wild’s* case to understand this direct and simple proposition. It is vigorous, irresistible good sense, which after all is the best law, wherever it admits of being properly applied. Again Lord *Cottenham* says—

“Take the case of the daughters;—the gift is of an annuity to themselves and their children. It is quite obvious that the testator did not intend the gift to be limited to the lives of the daughters. It cannot be that the duration of the subject matter was to be measured by the lives of the first takers, because the testator provides who shall enjoy this property after the expiration of those lives.”

The principle governing the whole case is thus put by Lord *Cottenham*:—

“We have here, therefore, not only the property directed to produce the annuities, but we have a disposition of the interest in the subject matter more extensive than the duration of those who are first to enjoy it.”

Lord *Campbell* concurred; and thereupon the decree of Lord Chancellor Sugden was reversed. The house then must be taken to have held, that the decree of Lord Chancellor Plunkett, which was right, ought not to have been disturbed on the rehearing. The reversing decree of Lord Chancellor Sugden was, therefore, itself overturned; while the decree of Lord Chancellor Plunkett, reversed by Lord Chancellor Sugden, was in its stead set up and re-established.

The case may be cited as showing remarkably the danger to which even the most learned are exposed when they forget the simple maxims of good sense. And herein lay the excellence of Lord Eldon, that while he refined more than any other judge—he never allowed himself to be the dupe of his own subtleties—but invariably restrained and corrected them by a never-failing original sagacity.

## POINTS IN COMMON LAW PRACTICE.

### RULE FOR NEW TRIAL ON PAYMENT OF COSTS, DISCHARGED IF COSTS NOT PAID.

THE application for a new trial is necessarily an application *ex parte*, and is often made merely for the purpose of delay. It is within the knowledge of every one familiarly acquainted with common law practice, that the anxiety of the courts to prevent injustice by granting a rule to show cause why there should not be a new trial, frequently produces results which it is impossible for the court to contemplate at the time the rule is granted. The delay affords an opportunity, which the unsuccessful suitor too often avails himself of, to prevent his antagonist from obtaining the fruits of a just verdict. In many cases, as our readers are aware, the rule for a new trial is made absolute upon the payment of costs, and the immediate payment of the costs is the best test of the sincerity of the applicant, that he really desires a new trial. The rule for a new trial being granted on the condition that costs shall be paid, it cannot be considered a hardship that the rule should be discharged if the applicant refuses to fulfil the condition. Until a very recent period, however, the practice on this point does not appear to have been settled. The point was brought under the consideration of *Patteson, J.*, when sitting in the Bail Court, in *Champion v. Griffiths*.<sup>a</sup> In that case the defendant had a verdict, and the plaintiff obtained a rule absolute for a new trial on payment of costs. The costs were taxed and demanded, but not paid within a reasonable time, and an application was then made to discharge the rule for a new trial. The reasonableness of the application was manifest, and the only question was, whether the rule to discharge the rule for a new trial, should be a rule absolute in the first instance, or only a rule to show cause? Upon which the learned judge said:—“I think you may take your rule absolute in the first instance, for discharging the plaintiff’s rule. If there is any reason for reviving or reopening that rule, he may apply to the court for that purpose.” The same point came before the Court of Exchequer for the first time in *Michaelmas Term* last, in a case of *Phillips v. Warren*,<sup>b</sup> but that court, adverting to its own peculiar prac-

<sup>a</sup> 1 Dowl. N. S. 319.

<sup>b</sup> 15 Law Jour. 30, Exch.

tice, instead of granting a rule absolute in the first instance, granted a rule *nisi*, which, in this court makes itself absolute, if cause be not shown against it within a limited time.

## FEES TO CLERKS OF THE PEACE.

We confess ourselves to be amongst the number of those, who conceive it to be of the essence of justice, when legal alterations are made for the real or supposed benefit of the public, that the pecuniary interest of individuals—injuriouly affected by the proposed change—should not be overlooked; and we regard with peculiar satisfaction any judicial decision which tends to the enforcement of this equitable principle.

The claims and rights of that eminently respectable and useful body of public officers, the Clerks of the Peace, having been for some time past, a subject of discussion, in the legislature as well as throughout the country, we take the earliest opportunity of directing attention to a case argued in the Court of Queen's Bench in Michaelmas Term last,\* in which an order of sessions directing the clerk of the peace to forego the receipt of certain fees was held to be an illegal order, and the court was called upon incidentally to put a construction upon the recent statute, 8 & 9 Vict. c. 114, "for the Abolition of certain Fees in Criminal Proceedings." This statute, as our readers are aware,<sup>b</sup> enacts, that the provisions of the stat. 55 Geo. 3, c. 50, respecting the discharge of prisoners without any fee, shall extend to all persons charged either with felony or misdemeanour, against whom no bill shall be found, or who on their trial shall be acquitted, or who shall be discharged, and that it shall not be lawful to demand or take from such persons any fee for their appearance to the indictment, or for allowing them to plead thereto, or for recording their appearance or plea, or for discharging any recognizance taken from any such persons or their sureties.

Previously to the passing of this act, (which obtained the royal assent in August 1845,) the magistrates of the county of Somerset, at a quarter sessions held in October 1844, ordered, that "no officer of this court do hereafter take or demand any fee or payment whatsoever from any defendant in misdemeanour." Mr. Coles,

the clerk of the peace for the county of Somerset, feeling himself aggrieved by this order, had it brought up by *certiorari* to the Court of Queen's Bench in the following term, upon an affidavit showing, that he (Mr. Coles) was appointed to the office of clerk of the peace in 1810, and from that period down to 1826, was in the habit of receiving certain fees paid by defendants in misdemeanours, which fees had been previously received by his predecessors in the office. That at the Michaelmas sessions, 1825, a table of fees to be taken by the clerk of the peace was made and settled, approved of at the next sessions, and submitted to and confirmed by the judges of assize at the next spring assize, pursuant to the stat. 57 Geo. 3, c. 91, s. 1. That such table had been acted upon, until the making of the order complained of, and that it comprised certain fees payable by defendants in misdemeanour.

Upon the motion to quash the order of sessions as illegal, the Attorney and Solicitor-General, for the Crown, objected:—1st, That the order in question was not properly removable by *certiorari*, as it was a mere administrative order by the court of quarter sessions to its own officer, and not a judicial proceeding. Secondly, That assuming the order to be properly removable by *certiorari*, it was good on the face of it, and the table of fees framed by the sessions and sanctioned by the judges, under the stat. 57 Geo 3, c. 91, was illegal and invalid, so far as related to the fees taken from defendants in misdemeanour. Lastly, It was submitted, that it was now useless to quash the order, since the stat. 8 & 9 Vict. c. 114, expressly prohibited the taking that particular class of fees which it was the object of the order to abolish.

Upon the first point the court stopped the counsel in support of the rule, observing that this was not only a judicial order but one of the very highest character, applicable to all the judicial proceedings of the court of quarter sessions.<sup>c</sup>

Upon the principal question the court was unanimously of opinion, that the order could not be maintained. The table of fees framed in 1826, and sanctioned by the judges, was *prima facie* proof that the fees mentioned therein were fees ascertained to have been up to that time legally payable, and Denman, C. J., seemed to think, that a table so settled was sufficient to authorise the clerk of the peace to receive the fees now complained of. Upon looking to the stat. 55 Geo. 3, c. 50, however, it was manifest that before the table was settled, fees were properly payable by defendants

<sup>c</sup> On this point Coleridge, J., cited *Williams v. Lord Bagot*, 4 Dowl. & Ry. 315, where a *certiorari* issued to an inferior court, to return the practice of the court, that it might appear on a record going to the court of error.

\* *The Queen v. Coles*, 15 Law J., Mag. Cas. 10, N. S.

<sup>b</sup> See the act, *ante*, vol. 30, p. 417.

in some cases of misdemeanour, and this being so, it was clear the sessions had assumed to do more than they had any right to do, in ordering that no fees whatever should in future be payable by any defendant in misdemeanour.<sup>d</sup> And *Wightman*, J., added, that it would be a very easy mode of getting rid of a table of fees sanctioned by the judges under the authority of an act of parliament, if at the next sessions the justices might undo all that had been legally and formally done: it would lead to this anomaly, that there would be a table of fees sanctioned by the highest authority, unreversed, and at the same time an order of sessions forbidding their officers to take the fees mentioned in it.

In reference to the suggestion of the counsel for the crown, that it would be useless to quash the order of sessions, as it only directed that which the stat. 7 & 8 Vict. c. 114, afterwards authoritatively declared to be the general law of the land, it was observed, in the course of the argument, and afterwards particularly adverted to by *Williams*, J., in his judgment, that the order of sessions was not a mere anticipation of the provisions of the recent statute, for that the order absolutely forbid taking certain fees which the statute of Victoria did not affect. For instance, it was said, that the fees payable upon traverses, and by persons convicted, were left untouched by the recent statute, whilst the justices by their order improperly assumed to abolish those fees. Upon these grounds the judges thought, they were not at liberty to decline to exercise their jurisdiction, (though it might not in every case be imperative upon them so to do,) but that they were bound to let the quarter sessions know, that the proceeding was not warranted by law. The order of sessions was therefore quashed.

#### BARRISTERS CALLED.

*Hilary Term*, 1846.

#### LINCOLN'S INN.

William Baliol Brett, Esq.  
Edwin Lumsdaine Sandys Lumsdaine, M. A.

<sup>d</sup> It was noticed by Lord Denman in the course of the argument, that by the table of fees in force at the Somerset sessions, persons convicted were required to pay the fees before they could know whether they should be convicted or not, whilst the stat. 7 & 8 Vict. c. 114, contemplated, that those fees should only be taken from persons convicted. In such cases, it was said, the clerk of the peace would take the fee at his peril.

William Henry Newman, Esq.  
John Walter Morrice, M. A.  
George Augustus Frederick Bentinck, M. A.  
Charles Palmer Phillips, M. A.  
Ralph Fletcher, M. A.  
Edward Penrose Hathaway, M. A.  
Henry Cotton, M. A.

#### MIDDLE TEMPLE.

16th January, 1846.

Thomas Wheeler, Esq., of St. John's, Cambridge.

William Morris, Esq.  
George William Bell, Esq.  
George Sweet Carr, Esq.  
Thomas Garfit, Esq.

30th January, 1846.

John Roberts, Esq.  
Thomas Campbell Foster, Esq.,  
Henry John Pantin, Esq.  
Frederick Ayrton, Esq.  
Henry David Erskine, Esq.  
Randal MacDonnell, Esq.  
John Henry Drury, Esq.  
Samuel Sidney Smith, Esq.  
Hugh George Robinson, Esq., B. A.  
William Campbell Sleigh, Esq., of St. Mary's Oxford.

Edward Kemble, Esq.  
John Burgess Karslake, Esq.  
Francis Worsley, Esq.  
James Stephen, Esq.

#### INNER TEMPLE.

Philip Warner Courtenay, Esq.  
Jonas Alleyne Maynard, Esq.  
Theodore William Whipham, Esq.  
Benjamin Bruntton Blackwell, Esq.  
Frederick Harold Ashworth, Esq.  
George Montagu Warren Peacocke, Esq.  
William Clement Drake Esdaile, Esq.  
Robert James Snape, Esq.  
Robert Ogle, Esq.  
Samuel Taylor, Esq.  
William John Harrison Moreland, Esq.  
Ernes Richard Seymour, Esq.

#### GRAY'S INN.

21st January, 1846.

Samuel Joyce, Esq.

#### ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

*From 1st November, 1845.*

#### Common Law Courts.

SINCE the 1st Nov. last, seven numbers of parts of the Common Law Reports have been published; and as well for easy reference, as for the convenient division of the subjects, we shall class the decisions under the following

heads :— 1. Construction of Statutes ; 2. Grounds of Action and Principles of Common Law ; 3. Common Law Pleadings ; 4. Evidence ; 5. Practice ; 6. Costs ; 7. Attorneys.

## I. CONSTRUCTION OF STATUTES.\*

### ACTION (NOTICE OF).

See *Railway Act*.

### AFFIDAVIT.

See *Limitations (Statute of)*, 3.

### AWARD.

See *Inclosure*.

### BOROUGH ELECTION.

*Aldermen*.—On the election of an alderman for a borough, if the voting papers do not contain an accurate description of the place of abode of the party voted for, the votes are bad, under stat. 7 W. 4., and 1 Vict. c. 78, s. 14, though the inaccuracy be without fraud, and the description in the voting paper be commonly understood to be that of the party. *Queen v. Deighton*, 5 Q. B. 896.

Cases cited : *Moses v. Newman*, 6 Bing. 556 ; 2 Darriss on Statutes, 707 ; *Queen v. Alderson*, 1 Q. B. 878.

### CANAL ACT.

*Bye-Law*.—*Sunday*.—By a local Act 6 Geo. 4, c. lxxi., the company of proprietors of a public navigation were empowered to make bye-laws for the good government of the company, and for the good and orderly using the navigation, and also for the well-governing of the bargemen, watermen, and boatmen, who should carry any goods, wares, or merchandize upon any part of the said navigation, and to impose and inflict such reasonable fines or forfeitures upon all persons offending against the same, as to the major part of the company should seem meet, not exceeding 5*l*. The company made a bye-law that the navigation should be closed on every Sunday throughout the year, and that no business should be transacted thereon during such time (works of necessity only excepted). nor should any person during such time navigate any boat, &c., nor should any boat, &c., pass along any part of the said navigation on Sunday, except for a reasonable distance for the purpose of mooring the same, and except on some extraordinary necessity, or for the purpose of going to, or returning from, any place of divine worship, under a penalty of 5*l*. *Held*, that the act did not authorize the company to make the above bye-law, and that it was illegal and void. *Calder and Hebble Navigation Company v. Pilling*, 14 M. & W. 76.

Cases cited : *The Masters, &c. of Gunmakers v. Fell, Willes*, 389 ; *Bosworth v. Herne*, Cas.

\* We have included in this selection of cases the decisions under the New Poor Law Act ; but reserve those of Bankruptcy for a separate class.

*Tamp. Hardw.* 409 ; *Adley v. Reeves*, 2 M. & Selw. 53 ; *Case of Tailors of Ipswich*, 11 Rep. 53, 54 n ; *Dodwell v. University of Oxford*, 2 Vent. 33, 34 ; *Sandiman v. Breach*, 7 B. & C. 96 ; 9 D. & R. 659 ; *Rex v. Lord Grosvenor*, 2 Stark. N. P. C. 512 ; *Reg. v. Governors of Darlington Grammar School*, 14 Law J. N. S., Q. B. 67 ; *Camden v. Anderson*, 6 T. R. 723 ; *Rex v. Rogers*, 10 East, 569.

### CARRIER.

See *Railway*.

### CERTIORARI.

See *Highways*, 1 ; *Door*, 3.

### CLERK TO JUSTICES.

*Fees*.—Under stat. 5 & 6 W. 4, c. 76, s. 92, the fees of a clerk to justices of a borough, for business done in respect of persons apprehended by the police, and brought before the justices, or in respect of informations and other proceedings taken by and at the instance of the police, must be paid out of the borough fund (if they cannot be obtained from the individuals who ought to pay them) as expenses "necessarily incurred in carrying into effect the provisions" of that act. And the court, in such case, will grant a mandamus to enforce payment.

On motion for such mandamus, it being suggested that a retrospective rate might be necessary, the court nevertheless made the rule absolute, leaving the defendants to allege that fact, if it existed, and discuss its effects, on a return. *Queen v. Gloucester, Mayor of*, 5 Q. B. 862.

Cases cited : *Queen v. Churchwardens of Chelmsford*, 5 Q. B. 66 ; *Queen v. Council of Liebfield*, 4 Q. B. 893 ; *Woods v. Reed*, 2 M. & W. 777 ; *Grindell v. Godmond*, 5 A. & E. 755 ; *Turner v. Rookes*, 10 A. & E. 47.

### COSTS.

See *Highway*, 2.

### COURT BARON.

A local act, regulating the proceedings in the courts baron of a hundred and manor, enacts, that, in case any personal action for the recovery of any debt or damages, shall be commenced and prosecuted out of the jurisdiction, and it shall appear to the judge of the court where such action shall be tried, that the debt or damages to be recovered in such action do not amount to 40*s*., and the defendant in such action shall duly prove by sufficient testimony, to be allowed by any of the judge or judges of the court where such action shall be tried, that at the time of commencing such action, such defendant was resident within the jurisdiction, and liable to be summoned or warned in either of the said courts-baron, for such debt or damages, then and in such case, unless the judge who shall try such cause shall, in open court, certify in writing that there was a palpable or reasonable cause of action for 40*s*., or more, or that the freehold or title to lands or tenements, principally came in question at such trial, *such plaintiff shall not recover, but be nonsuited in such action, &c.* *Held*, that it is not

necessary to plead the statute, but that the judge is bound to receive evidence of the defendant's residence within the local jurisdiction, and upon being satisfied as to the sufficiency of the proof of the fact, to nonsuit the plaintiff. *Hilliard v. Webster*, 6 M. & G. 983.

Cases cited: *Barney v. Tubb*, 2 H. Blac. 351; *Taylor v. Blair*, 3 T. R. 452; *Parker v. Elding*, 1 East, 852; *Sandall v. Bennett*, 2 Adol. & E. 204; 4 N. & M. 89; *Reynolds v. Talmon*, 2 Q. B. 644.

#### HIGHWAYS.

1. *Certiorari*.—Where a rule for a certiorari to bring up an order of quarter sessions, confirming on appeal an order of justices under the Highway Acts, "with all things touching the same," had been obtained, and a return made, which did not include the order of justices; the court of Queen's Bench made absolute a rule for a certiorari to remove the order of justices, although obtained pending the former rule.

An order of justices at special sessions, under the 4 & 5 Vict. c. 59, s. 1, must show on the face of it, that the road in respect of which they proceed to adjudicate, is within the division for which the special sessions are held; but it need not show in what proportion of the rate the sum to be paid stands; nor out of which of the three rates permitted by the 5 & 6 W. 4, c. 50, the sum is to be taken.

The six months within which a certiorari must be obtained, run from the date of the original order of justices.

The powers conferred by the 4 & 5 Vict. 59, s. 1, on "the justices at any special sessions for the highways, holden after the passing of this act," apply only to a special sessions holden under the 5 & 6 W. 4, c. 50, s. 45. *Reg. v. Morice*, 2 D. & L. 952.

Cases cited: *Reg. v. The Justices of Cornwall*, 1 Car. Ham. and Allen's New Sess. Cases, p. 414; *Reg. v. Martin*, 2 Q. B. 1037, note (a); 1 Salk. 147; *Rex v. Sparrow*, 2 T. R. 196, note (a); *Rex Justices of Middlesex*, 5 A. & E. 626; S. C. 1 N. & P. 92; *In re Fearless*, 1 Q. B. 143; S. C. 4 P. & D. 428.

2. When justices have directed an indictment against a parish, under stat. 5 & 6 W. 4, c. 50, s. 95, for non-repair of a highway, and the judge of assize directs payment of the costs out of the parish highway rate, he must ascertain the amount of costs, and order payment of the sum so ascertained. Where the judge's order is only to pay the costs generally, this court cannot enforce such an order by mandamus.

Whether the amount can be ascertained after the commission of the judge of assize has expired, *quere*. *Queen v. Clark*, 5 Q. B. 887.

Cases cited: *Sellwood v. Mount*, 1 Q. B. 726; *Queen v. Long*, 1 Q. B. 740; *Queen v. Pembroke*, 3 Q. B. 901, 903; *Queen v. Chedworth*, 9 C. & P. 285; *Queen v. Heanor*, Hil. T. 1845; *Rex v. Treasurer of County of Surrey*, 1 Chitt. R. 650; *Rex v. St. Katherine Dock Company*, 4 B. & Ad. 360; *Rex v. Severn & Wye Railway Company*, 2 B. & Ald. 646; *Queen v. Bristol Railway Company*, 2 Q. B. 64.

#### EXECUTION.

*Under 20l.*—Since the 7 & 8 Vict. c. 96, a defendant may be taken in execution in an action on the judgment recovered, though the debt recovered in the former suit was under 20l., and the second action is brought within a year. *Mason v. Nicholls*, 14 M. & W. 118.

See *Hopkins v. Freeman*, 13 M. & W. 373.

#### INCLOSURE.

A drain was made in pursuance of an award by the commissioners under an inclosure act, passing along Blackacre, and over and across Whiteacre; by which award it was ordered, that the owners of the lands over which the drain passed, should cleanse and keep the same of a sufficient width to carry off the water intended to run down the same. The occupier of Blackacre afterwards opened a sough or underdrain into the awarded drain. *Held*, that this method of draining not being contemplated by the award, the owner of Whiteacre was not required to keep the awarded drain of sufficient capacity to carry off the water from the sough. *Sharpe v. Hancock*, 7 M. & G. 354.

#### INSOLVENT.

1. *Commissioners' Jurisdiction*.—A defendant in execution for the damages and costs recovered in an action of assault and false imprisonment, petitioned the Court of Bankruptcy, under the 5 & 6 Vict. c. 96. A commissioner made an order for his discharge. In an action against the keeper of the Queen's prison for an escape: *Held*, that whether this was or was not a debt from which the commissioner had power to discharge the prisoner, the gaoler was not liable for an escape, inasmuch as he acted in obedience to the order of a judge in a matter over which he had jurisdiction.

*Semble*, that a commissioner of bankruptcy has no power under the 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, to order the discharge of a person in custody for damages recovered in actions of tort. *Thomas v. Hudson*, 2 D. & L. 873.

Cases cited: *Culpepper v. Joy*, 4 Q. B. 173; S. C. 3 G. & D. 619; *Colston v. Ross*, Cro. Eliz. 893; *Anon.* 1 Salk. 273; *Brown v. Compton*, 8 T. R. 424; *Orby v. Hales*, 1 Ld. Raym. 3; *Marshalsea case*, 10 Rep. 68; *Saffery v. Jones*, 2 B. & Ad. 598; *Savory v. Chapman*, 11 A. & E. 829; S. C. 3 P. & D. 604; 8 Dowl. 656; *Nitchell v. Foster*, 12 A. & E. 472; S. C. 4 P. & D. 150; *Jackson v. Rowe*, 2 Sim. & Stu. 472; *Marsh v. Woolley*, 5 M. & G. 675; S. C. 6 Scott, N. R. 555; 1 D. & L. 84; *Andrews v. Marris*, 1 Q. B. 3; S. C. 1 G. & D. 268; *Carratt v. Morley*, 1 Q. E. 18; S. C. 1 G. & D. 275; *Moravia v. Sloper*, Willes, 50; *Ex parte Partington*, Q. B., M. T. 1844.

2. It is no objection to the discharge of a prisoner, under 48 G. 3, c. 123, that he has petitioned and has been remanded by the insolvent court.

The notice of motion under that statute must be entitled in accordance with the title of the cause. *Clapperton v. Monteith*, 6 M. & G. 909.

Cases cited: *Chew Lye*, 7 Dowl. P. C. 465; *Hopkins v. Pledger*, 1 D. & Lowndes, 119.

#### JOINT-STOCK COMPANY.

A preliminary association was formed for the purpose of establishing a joint-stock company, of which A. was named president, and B. vice-president. They both signed an agreement to subscribe for a certain number of shares, and to pay a deposit of 5*l.* per share when shares to the amount of 50,000 should have been subscribed for; and they attended two meetings of the association. The company was never in fact formed. C. did certain work at the request of the secretary to the proposed company.

In an action by C. against A. and B.: *Held*, that the jury were properly told to consider, first, whether there had been a direct contract by A. and B. with C.; secondly, whether A. and B. were members of a partnership; and, thirdly, whether they had held themselves out as such to C. *Wood v. Duke of Argyll*, 6 M. & G. 928.

Cases cited: *Dickenson v. Valpy*, 10 B. & C. 140; 5 Mann. & Ryl. 126; *Fox v. Clifton*, 6 Bing. 776; 9 Bing. 115; 4 M. & P. 776; 2 M. & Scott, 146; *Money Penny v. Hartland*, 1 C. & P. 352; 2 C. & P. 378; *Doubleday v. Muskett*, 7 Bing. 110; 4 M. & P. 750.

#### JURISDICTION.

See *Insolvent*, 1.

#### LANDLORD AND TENANT.

*Sheriff*.—Under the 8 Ann. c. 14, s. 1, the landlord is entitled as against the execution-creditor, only to rent due at the time of the seizure. But if the sheriff returns, that he has paid so much "for rent due for the premises," the court will intend that payment was for rent due at the time of the seizure; and it is no objection to the return that it does not expressly state that the rent was due at the time of the seizure. Where the sheriff returns that he has retained a sum for possession money, it is no ground for quashing the return, that the plaintiff is charged with more possession money than the account payable by him for keeping possession. *Reynolds v. Barford*, 7 M. & G. 449.

Cases cited: *Smallman v. Pollard*, 5 M. & G. 1003; *Hepworth v. Sanderson*, 18 Bing. 19; 1 Moore & Scott, 64; *Rex v. Sheriff of Middlesex*, in *Williams v. Pennell*, 1 B. & Ald. 190.

#### LIMITATION (STATUTE OF).

1. *Tenant at will*.—The Limitation Act, 3 & 4 W. 4, c. 27, s. 7, which (explaining sect. 2) enacts that the right of action, where any person "shall be" in possession of land as tenant at will, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year from its commencement, does not apply where the tenancy at will has ceased before the passing of the statute. In such a case the limitation runs from the time when the tenancy determines without the intervention of the act. *Doe d. Evans v. Page*, Q. B. 767.

Cases cited: *Doe d. Bennett v. Turner*, 7 M. & W. 226; *Turner v. Doe d. Bennett*, 9 M. & W. 643; *Doe d. Stanway v. Rock*, 4 M. & G. 30; *Doe d. Bennett v. Turner*, 7 M. & W. 234; *Nepean v. Doe dem. Knight*, 2 M. & W. 894; *Doe d. Corbyn v. Bramston*, 3 A. & E. 63; *Doe d. Burgess v. Thompson*, 5 A. & E. 532; *James v. Salter*, 3 New Ca. 544.

See notes on this case, p. 310, *ante*.

2. The stat. 3 & 4 W. 4, c. 27, s. 8, applies to tenancies from year to year created before, and existing at the passing of the act. *Doe d. Jukes v. Sumner*, 14 M. & W. 39.

See *Doe d. Evans v. Page*, 13 Law J. (N. S.) Q. B. 153; *Doe d. Bennett v. Turner*, 7 M. & W. 226.

3. *Beyond seas*.—If a plaintiff be beyond seas at the time of the action accruing, he may sue, under stat. 21 J. 1. c. 16, s. 7, at any time before his return, as well as within the limited time after his return.

*Semble*, that an affidavit to be used on a motion in this court cannot be sworn before a British consul abroad, under 6 Geo. 4, c. 87, s. 20. *Le Veux v. Berkeley*, 5 Q. B. 836.

Cases cited: *Strithorst v. Graeme*, 2 W. Bl. 723; S. C. 3 Wils. 145; *Pigzot v. Rush*, 4 A. & E. 912; (*handler v. Vilett*, 2 Wms. Saund. 120, 121 (a), and notes (b), (k), (6 ed.); *Pickardo v. Machado*, 4 B. & C. 886; *In re Barber*, 4 Dowl. P. C. 640; S. C. 2 New Ca. 268; *In re Lady Hutchinson*, 4 Bing. 606.

4. *Conditional acknowledgment*.—A. having signed, as surety for B., a joint and several promissory note made by A. and B., and being called upon after B.'s death for payment of the money due upon it, requested the holder to apply to B.'s executrix, stating (in writing) that "what she should be short he would assist to make up." The executrix having been applied to, but not paying anything: *Held*, that A.'s conditional promise of payment became thereby absolute, and rendered him liable in an action brought against him on the note more than six years after its date, and after a reasonable time for payment by the executrix had elapsed. *Humphreys v. Jones*, 14 M. & W. 1.

See *Morrell v. Frith*, 3 M. & W. 402.

#### MANDAMUS.

See *Clerks to Justices*.

*Justices*.—On motion for a mandamus to justices, the court, if they doubt whether the writ should or should not be granted, will not direct it to issue merely in order that the justices may make a return, and be protected by Stat. 6 & 7 Vict. c. 67, s. 3, if a peremptory mandamus should issue and be obeyed.

And, where a mandamus is directed to justices, they ought not to make a return instead of obeying the writ, merely to gain the protection of the statute. *Queen v. Earl of Dartmouth*, 5 Q. B. 878.

#### OVERSEERS.

The authority of justices in petty sessions to audit the accounts of overseers, under stat. 50 G. 3, c. 49, s. 1, is not taken away, as to any

portion of such accounts, by stat. 4 & 5 W. 4, c. 76, s. 47; and the justices may allow items which have been disallowed by the auditor under the latter statute at his quarterly audit. *Queen v. Earl of Dartmouth*, 5 Q. B. 878.

#### PARTNERSHIP.

See *Joint Stock Company*.

#### PAVING ACT.

1. *Construction of.*—By a paving, lighting, watching, cleansing and improving act, commissioners are empowered to enter into any contract for the performance of any of the works by the act authorized to be done, or for any other of the purposes of the act, provided that no such contract shall be made for a longer term than three years; and before any such contract shall be entered into, ten days' public notice, at least, shall be given, in order that persons willing to undertake the same, may make proposals to the commissioners at a time and place in such notice to be specified; and all such contracts shall specify the several works to be done, and the prices to be paid for the same, and the time or times when the works are to be completed, together with the penalties to be incurred in the case of non-performance; and the same shall be signed by the commissioners, or by any three of them, or by their clerk, and also by the person or persons contracting to perform such works respectively; and copies of such contracts shall be entered in a book to be kept for that purpose by the clerk. *Held*, that the proviso applies to the duration of the contract only, and that the subsequent provisions are not essential but directory, and that a contract signed otherwise than in the manner pointed out, is not, therefore, void.

A certain number of the commissioners were appointed a road-committee, who resolved to obtain estimates for certain works. At a meeting of the commissioners, 28th of April, 1842, a tender made by the plaintiff was read, and the committee recommended that it should be accepted. A general board of commissioners met 3rd of May, when the minutes of the road-committee were confirmed, "but with the understanding that the contract (the work in question) should not be entered into otherwise than upon the express condition that the commissioners should not be required to pay the contractor until they should have received the moneys from the owners of the lands." At a meeting of the road-committee, 5th of May, it was resolved that the contract proposed to be entered into by the plaintiff should be signed, and it was accordingly signed by the road-surveyor, that being the course usually adopted on such occasions. The contract so signed contained an undertaking on the part of the commissioners to use all lawful means for compelling the respective owners of the lands adjoining on each side of the street to pay their portions, on the work being satisfactorily completed. *Held*, that the resolution of the general board, coupled with the order of the road-committee, authorized the road-surveyor

to sign, on behalf of the commissioners, a contract made in conformity with that resolution, and that undertaking was reasonable: and that its insertion in the contract by the road-committee was justifiable.

By a subsequent act, after giving the commissioners authority to cause certain streets, &c., to be soughed, paved, &c., it was provided that the charges and expenses should be reimbursed to the commissioners by the occupiers or owners of the houses, buildings, ground, or land, within or on the respective sides of the streets, &c., so to be soughed, paved, &c., each such occupier or owner paying a proportionable share thereof, to be ascertained by the commissioners or their surveyor, and that if any such occupier, &c., should at any time refuse or neglect to pay such proportion of the said charges and expenses, the same should be levied by distress and sale, or sued for and recovered, together with full costs of suit, in any of her Majesty's courts of record at Westminster.

In an action against one of the commissioners for work done under a contract, the breach of promise assigned was, that although there were divers lawful means for compelling the owners of the houses, &c. to pay their respective portions, to wit, the means in the acts mentioned, and which the commissioners might and ought to have resorted to, yet neither the defendant nor the other commissioners did or would use all or any of such lawful means, but therein made default; and the plaintiff had thereby been prevented from obtaining the money due to him. The defendant, by his plea, traversed the allegation, that there were lawful means existing for compelling the owners, &c., to pay. *Held*, that the meaning of the clause was, that the landowners should not be called upon to pay in anticipation, but that, when the work had been actually done, the commissioners were to be in a condition to call upon the landowners for payment of their proportionable shares of the expenses incurred, although the amount might not have been actually paid to those who did the work.

*Held*, also, that the omission in the declaration to specify any particular means whereby the owners and occupiers might be compelled to pay, was no ground for arresting the judgment. *Cole v. Green*, 6 M. & G. 872.

Cases cited: *Rex v. Inhabitants of Birmingham*, 8 B. & C. 29; 2 Mann. & Ryl. 230; *Rex v. Justices of Leicester*, 7 B. & C. 6; 9 D. & R. 772; 1 M. & G. 448; *Rex v. Sparrow*, 2 Stra. 1123; *Rex v. Loxdale*, 1 Burr. 445; *Burdett v. Spilisbury*, 6 M. & G. 386, 408, 422, 429, 440, 468; *Negelen v. Mitchell*, 7 M. & W. 612; 1 Dowl. N. S. 110; *Davison v. Gill*, 1 East, 64; *Curling v. Johnson*, 10 Bing. 89; 3 M. & Scott, 496; *Cone v. Chapman*, 5 A. & E. 647; 1 N. & P. 104; 2 Harr & W. 335; *Rex v. Justices of Leicester*, 7 B. & C. 6; 9 D. & R. 772; *Rex v. Inhabitants of Birmingham*, 8 B. & C. 29; 2 Mann. & Ryl. 230.

2. By a paving act commissioners were authorized to impose a rate for paving, repairing, &c., the streets, squares, &c., within the

city of W., and certain suburban parishes, upon the occupiers of houses, buildings, lands, &c., "except all arable, meadow, and pasture land, without the walls of the city, and also except all that messuage, &c., together with the barns, stables, &c., and grounds thereunto belonging, situate, &c., and now in the tenure or possession of S. T., called or known by the name of B. Farm." A part of the grounds so exempted were afterwards occupied by a railway company, for the purposes of their railway.

*Held*, that such part was still exempt from the rate. *Todd v. London and South-Western Railway Company*, 7 M. & G. 366.

#### POOR.

1. *Relief in a place out of the parish.*—Relief given by parish officers in a place out of their parish, but where they, by contract, have their paupers maintained, is the same in legal effect, as to settlement, as relief within the parish, and is not therefore *prima facie* evidence that the pauper is settled in the relieving parish.

Although it do not appear that such place was parish property, or established according to any statute for building or providing parish houses.—*Queen v. Giles, Inhabitants of*, 5 Q. B. 1672.

Cases cited: *Rex v. St. Peter and St. Paul in Bath*, Cald. 213; S. C. 1 Bott. 432, pl. 483, (6th ed.); *Rex v. Edwinstone*, 8 B. & C. 671; *Rex v. Trowbridge*, 7 B. & C. 252; *Rex v. Yarwell*, 9 B. & C. 894; *Rex v. Chatham*, 8 East, 498; *Rex v. Coleorton*, 1 B. & Ad. 25; *Rex v. Chadderton*, 2 East, 27.

2. *Removal of wife from husband.*—*Examinations.*—*Settlement.*—Assuming that a wife may be removed to her maiden settlement without her husband by consent of both, such consent is not to be inferred from examinations of the husband and wife taken at the same time before the removing justices, in which the husband states his consent, and the wife says nothing on the subject.

The first examination purported by the heading to be taken by the justices, touching the settlement of J. M., the husband; other material ones purported to be taken "at the time, place, and in manner aforesaid;" but one of these related entirely to the wife's maiden settlement, and the order removed her and her children, and not the husband. *Held*, that the examinations were not on that account objectionable, on appeal against the order.

The examinations stated, that the husband and a parish officer had diligently inquired in all likely places for the husband's settlement, but had not found any, and believed he had none. *Held*, that the search was sufficiently stated, and that the examinations were not defective for omitting to show with more certainty that the husband had not a settlement in Scotland, Ireland, or the Isle of Man, &c., to which he and his family might have been removed under Stat. 59 G. 3, c. 12, s. 33. *Queen v. Leeds*. 5 Q. B. 916.

Cases cited: *Rex v. Eltham*, 5 East, 113; *Rex v. Leeds*, 4 B. & Ald. 498; *Candle v. Seymour*,

1 Q. B. 889; *Queen v. Silkstone*, 2 Q. B. 520; *Rex v. St. Mary, Leicester*, 3 A. & E. 644; *Rex v. Eastbourne*, 4 East, 103.

3. *Certiorari.*—*Payment of rates.*—A certiorari issued to bring up all orders made between 'the inhabitants' of the parish of M. and those of the parish of O. An order of session was returned, made on appeal by "the churchwardens and overseers" of M. against an order of removal from O. to M. *Held*, no variance.

A statement, in grounds of appeal, that the pauper became tenant of a house, &c., occupied it for seven months, and "paid" the parochial rates or taxes in respect of such house, does not shew a settlement by being charged with and paying public taxes, &c., within Stat. 3 & 4 W. & M. c. 11, s. 6. *Queen v. St. Olave's, Southwark*. 5 Q. B. 912.

Cases cited: *Rex v. Hedingham Sible, Burr*. S. C. 112; *Queen v. Barking*, 2 Salk. 432; *Queen v. Flint*, 3 Ld. Ray. 820; *Queen v. Colbeck*, 12 A. & E. 161; *Queen v. Fordham*, 11 A. & E. 73, 79; *Queen v. Pilkington*, 5 Q. B. 662; *St. Mary-le-More v. Heavytree*, 2 Salk. 478; *Rex v. Walsall*, Cald. 35, 37.

4. *Chargeability.*—*Overseer.*—*Examinations.*—*Rent.*—If the complaint on which paupers are removed purports to be "information and complaint of D., general assistant overseer of the poor of the Preston union," of which the removing township is part, without any further statement as to the complainant, and copies of the order of removal and examinations are transmitted by the removing parish, according to Stat. 4 & 5 W. 4, c. 76, s. 79. *Quere*, whether, on appeal, it be ground of objection that the complaint was made by a person not appearing, on the face of the document, to have any authority.

*Semble*, per Patteson J., that, if the sessions, on hearing evidence, have confirmed the order, this court may presume that any authority in fact was proved.

If the pauper in his examination states that he took a house for a year, at 19l., and resided, &c., and "paid rent" for the whole time of his tenancy, this does not shew the house to have been held, and "the rent for the same" paid, within stat. 59 G. 3, c. 50. *Preston v. Leeds*, 5 Q. B. 907.

Cases cited: *Queen v. Justices of Buckinghamshire*, 3 Q. B. 800, 807; *Ex parte Overseers of Harney*, 1 Dowl. & Lowndes, 673; *Queen v. Altermun*, 10 A. & E. 699; *Queen v. Recorder of Pontefract*, 2 Q. B. 548.

5. *Assistant Overseer.*—*Examinations.*—*Hiring.*—If the complaint on which paupers are removed purports to be "the information and complaint of R. R., assistant overseer," without any further statement as to the complainant, and copies of the order of removal and examinations are transmitted by the removing parishes according to stat. 4 & 5 W. 4, c. 76, s. 79. *Quere*, whether the sessions, on appeal, may at once treat the complaint as made without authority, and on that ground quash the order of removal, or whether they must receive evidence, if tendered, to shew that the assistant



overseer was in fact authorized to lay the complaint.

The examinations on which an order of removal was made stated, that the pauper came to live with *B.*, as a farm servant; that he was not engaged for any particular time, but that *B.* found him board, washing, lodging, and clothes for so long a time as he staid; that the pauper continued in *B.*'s service in that manner, without leaving, for three years, during all which time he lived and slept on the farm; that there never was any other agreement come to, but *B.* found the pauper in board, washing, clothing and lodging, during the service. *Held*, that the examinations did not show any hiring, and were therefore insufficient. *The Queen v. Catteral*, 5 Q. B. 901.

Cases cited: *Bennett v. Edwards*, 7 B. & C. 586; *Queen v. Bedingham*, 5 Q. B. 653; *Queen v. Recorder of Worcester*, ib. 508; *Queen v. Leominster*, 5 Q. B. 640; *Rex v. Wincanton*, Burr. S. C. 299; *Rex v. Christ's Parish in York*, 3 B. & C. 459; *Rex v. Stockbridge*, Burr. S. C. 759.

#### RAILWAY.

1. By the acts of parliament under which a railway company was incorporated, it was provided that, the charges for the carriage of goods should be reasonable and equal to all persons; and that no reduction or advance should be made, either directly or indirectly, in favour of or against any particular person. The company acted themselves as carriers for the public, and they issued certain scales of their charges for carriage of goods, including the collection, loading, unloading and delivery of parcels. They also carried goods for other carriers, to whom they made certain allowances, as an equivalent for the trouble of the collection, &c., of parcels, such collection, &c., being performed by the carriers. But in their dealings with *A.*, a particular carrier, they refused to make such allowances, but were willing to perform for him all the things which formed the consideration for such allowances. *Held*, that the charges of *A.* were not equal or reasonable.

The company, in their transactions with the public and with carriers, made the following distinction in their charges for carriage:—In the case of the public, if there were several packages from one consignor, to several consignees, or from several consignors to one consignee, the charge was upon the aggregate weight. In the case of carriers, if there were several packages for several consignees, the charge was upon the separate weight of each package, unless more than one package belonged to the same consignor (not being the carrier), or was going to the same consignee, in either of which cases the charge was upon the aggregate weight. But in such cases the company recognized the carrier only as the consignor and consignee of the goods, the agent of the carrier, in fact, receiving the goods at the end of the transit.

*Held*, that the company were bound to treat a carrier as consignor and consignee, for all purposes including the mode of charging in the

aggregate. *Held*, also, that *A.* having paid the extra charges in both of the instances above-mentioned, might recover the amount of such payments in an action for money had and received against the company, such payments not being voluntary, but made in order to induce the company to do that which they were bound to do without requiring such payments. Acts of parliament which confer privileges upon a company, and profess to give the public certain advantages in return, are to be construed strictly against the company, and liberally in favour of the public. *Parker v. Great Western Railway Company*, 7 M. & G. 253.

Cases cited: *Pickford v. Grand Junction Railway Company*, 10 M. & W. 399, S. C., not S. P.; 8 M. & W. 372; *Dew v. Parsons*, 2 B. & A. 562; 1 Chitt. Rep. 295; *Morgan v. Palmer*, 2 B. & C. 729; 4 D. & R. 283; *Ansell v. Waterhouse*, 6 M. & S. 385; *Waterhouse v. Keen*, 4 B. & C. 200; 6 D. & R. 257; *Parsons v. Blandy*, Wightw. 22; *Smith v. Bromley*, 2 Dougl. 697, n.; *Palmer v. Grand Junction Railway Company*, 4 M. & W. 749; *Pozzi v. Skipton*, 8 A. & E. 963; 1 P. & D. 4; *Astley v. Reynolds*, 2 Stra. 915; *Hyde v. Trent and Mersey Navigation Company*, 5 T. R. 389; *Brisbane v. Dacres*, 5 Taunt. 143; *Bilbie v. Lumley*, 2 East, 469; *Knibbs v. Hall*, 1 Esp. N. P. C. 84; *Brown v. McKinnall*, ib. 279; — *v. Piggott*, cited in *Cartwright v. Rowley*, 2 Esp. N. P. C. 723; *Queen v. Leicestershire and Northamptonshire Union Canal Company*, 3 Carr. & Oliv. Ra. & Can. Ca. 1.

See notes on this case, p. 61 *ante*.

2. The London and Brighton Railway Company, by their act, (7 W. 4, and 1 Vict. c. cxix.), were empowered to make the railway, which all persons were to have liberty of using with carriages, &c., on payment to the company of tolls regulated by the act; the company were also empowered to provide locomotive engines on the railway, and charge for the use of them, and to use locomotive engines and carriages for the conveyance of passengers, goods, &c., and to charge for such conveyance, in addition to the toll, within a limited amount. It was enacted that no action or proceeding should be prosecuted against any person or corporation for any thing done or omitted to be done in pursuance of the act, or in the execution of the powers or authorities given by it, without 21 days notice in writing.

Declaration in case against the company charged, that they were owners of the railway, and of carriages used by them for the conveyance of passengers along it, for reward; that they being owners of the railway and carriages, plaintiff, at their request, became a passenger in one of the carriages, for reward to them, and they received him as such passenger; and it became their duty to use due care and skill in conveying him. Breach: that they did not use due care and skill in conveying him, but took so little care and so negligently and unskillfully conducted themselves in carrying him, and managing the carriage in which he was a passenger, the train to which it was attached,

and the engine whereby it was drawn upon the company's railway, that the carriage was thrown off the rails and plaintiff injured. *Held*, that no notice of action was necessary, the company being sued in their capacity as carriers, and not for anything done or omitted under the special authority of the act. Although, for the purpose of showing that the accident occurred from a speed which was improper under the circumstances, evidence was given that the rails were defective at the spot.

Per Lord Denman, C. J., at *nisi prius*. The plaintiff proved a *prima facie* case of negligence against defendants, by showing that when the accident occurred, the train and railway were exclusively under their management. *Carpue v. London and Brighton Railway Company*, 5 Q. B. 747.

Cases cited: *Carruthers v. Payne*, 5 Bing. 270; *Edge v. Parker*, 8 B. & C. 697; *Worth v. Budd*, 2 B. & Ad. 172; *Fletcher v. Greenwell*, 5 Tyrwh. 316, S. C.; (not S. P.) 1 C. M. & R. 734; *Palmer v. Grand Junction Railway Company*, 4 M. & W. 749; *Smith v. Shaw*, 10 B. & C. 277; *Palmer v. Grand Junction Railway Company*, 4 M. & W. 766; *Lancaster Canal Company v. Parnaby*, 11 A. & E. 230, 243, in Exch. Ch., affirming the judgment of Q. B. in *Parnaby v. Lancaster Canal Company*, 11 A. & E. 223; *Wallace v. Smith*, 5 East, 115; *Palmer v. Grand Junction Railway Company*, 4 M. & W. 766.

See notes on this case, p. 166, *ante*.

3. *Service of process*.—An act incorporated a company for making a railway from Dublin to Drogheda, enacted, that in case of any summons or writ upon the company, "personal service thereof upon a secretary or clerk of the company, or leaving the same at the office of the company or of a secretary or clerk, or delivering the same to some inmate at such office of the company, or at the usual place of abode of such secretary or clerk, or in case the same respectively should not be found or known, then personal service thereof upon any other agent, &c., or on any director of the company," should be deemed good service. A writ of summons having been issued out of this court into Middlesex, against the company, who had not any office in England, or any secretary or clerk to represent them here, was served upon one of the directors of the company in London: *Held*, that such service was null and void; that the proper service was upon the secretary or clerk at the office; but that the parties residing in Ireland, were not amenable to the jurisdiction of this court. *Evans v. Dublin and Drogheda Railway Company*, 14 M. & W. 142.

#### RENT.

See *Landlord and Tenant*.

#### REGISTRATION OF VOTERS.

1. *Claim to be rated*.—A claim made by an occupier to have his name inserted in a rate, under the 2 W. 4, c. 45, s. 30, is good only for the rule then in existence. *Wansey*, App.; *Perkins*, Resp. *Lockey's case*, 8 Scott, N. R. 970.

2. *Description of premises*.—A building that is calculated to be used as a dwelling-house, is properly described as "a house," though not actually used as such. *Daniel*, App.; *Coulsting*, Resp. 8 Scott, N. R. 949.

Cases cited: *Elsmore v. The Inhabitants of the Hundred of St. Briavella*, 8 B. & C. 461; 2 M. & R. 514; *Sweetman's case*, *Alcock's Reg. Cas.* 27.

3. *Description of premises*.—*Notice of claim*.—In the list of borough voters made out by the overseers pursuant to the 6 & 7 Vict. c. 18, s. 13, it is not necessary that it should appear whether the occupation is joint or sole.

*Quare*, whether or not that fact should appear in a notice of claim by one whose name has been omitted. *Daniel*, App.; *Camplin*, Resp., 8 Scott, N. R. 999.

Cases cited: *Joint Occupiers' case*, *Alcock's Reg. Cas.* 2; *Bartlett*, App.; *Gibbs*, Resp. 7 Scott, N. R. 609; 5 Mann. & Gr. 81; *Rex v. The Inhabitants of Great Watering*, 5 B. & Ad. 971; 3 N. & M. 47; *Rex v. The Inhabitants of Tunbridge*, 6 B. & C. 88; 9 D. & R. 128; *Daniel*, App.; *Coulsting*, Resp. 8 Scott, N. R. 949; 7 Man. & Gr. 122.

4. *Description of premises*.—Two distinct buildings cannot be joined together in order to constitute a borough qualification, under the 2 W. 4, c. 45, s. 27. *Dewhurst*, App.; *Fielden*, Resp., 8 Scott, N. R. 1013. See *Gadsby*, App.; *Barrow*, Resp., 8 Scott, N. R. 799; 7 Man. & Gr. 21.

Cases cited: *Webb*, App.; *The Overseers of Aston*, Resp. 5 Man. & Gr. 14; 7 Scott, N. R. 545; *Sweetman's case*, *Alcock's Reg. Cas.* 27; *Rex v. The Inhabitants of Macclesfield*, 2 B. & Ad. 870; *Rex v. The Inhabitants of Tadcaster*, 4 B. & Ad. 703; 1 N. & M. 466; *Rex v. The Inhabitants of Gosforth*, 1 Ad. & E. 226; 3 N. & M. 303; *Rex v. Iver*, 1 Ad. & E. 228; 3 N. & M. 28; *Rex v. The Inhabitants of Newtown*, 1 Ad. & E. 238; 3 N. & M. 306.

5. *Lodgers*.—*Statement of the case*.—The occupier of part of a house, where the landlord resides upon the premises, and retains the key of the outer door, is a mere lodger, and is not a person occupying "as owner or tenant."

*Quare*, whether a person can be registered for a borough in respect of a qualification described as the occupation of "part of a house."

Where a case sent by the revising barrister, found that a claimant "stated" certain matters, it was remitted upon the ground that it set forth evidence and not facts. *Pitts*, App. *Smedley*, Resp., 8 Scott, N. R. 907.

Cases cited: *Score*, App.; *Huggett*, Resp. 8 Scott, N. R. 919; *Wansey*, App.; *Perkins*, Resp. (*Hill's case*), 8 Scott, N. R. 978; *Wright*, App.; *The Town Clerk of Stockport*, Resp.; 7 Scott, N. R. 561; 5 Man. & Gr. 33.

6. *Lodgers*.—The occupier of a part of a house, who has a key of the outer door, the landlord not residing or occupying any portion of the premises, is entitled to vote.

*Semble* (per Maule, J.), that "apartments" is a sufficient description of the premises so occu-

ped. *Score*, App.; *Huggett*, Resp., 8 Scott, N. R. 919.

Cases cited: *Wright*, App.; *The Town Clerk of Stockport*, Resp. 7 Scott, N. R. 581; 5 Man. & Gr. 33; *Pitts*, App.; *Smedley*, Resp. 8 Scott, N. R. 907.

7. *Lodgers*.—One who has the exclusive occupation of a floor in a house, and possesses a key to the outer door of the house, the landlord himself residing on the premises, is not entitled to be registered as a voter. *Wansey*, App.; *Perkins*, Resp., *Hill's case*, 8 Scott, N. R. 978; *Crocker*, App., *the Overseers of Lambeth*, Resp., 8 Scott, N. R. 985.

Cases cited: *Pitts*, App.; *Smedley*, Resp.; 8 Scott, N. R. 907; 7 Man. & Gr. 85; *Wright*, App.; *The Town Clerk of Stockport*, Resp.; 5 Man. & Gr. 33; 7 Scott, N. R. 561; *Joint Occupiers' case*, *Alcock's Reg. Cas. 2*; *Fludler v. Lombe*, *Cas. temp. Hard. 307*; *Score*, App.; *Huggett*, Resp. 8 Scott, N. R. 919; 7 Man. & Gr. 95; *Fenn v. Grafton*, 2 Bing. N. C. 617; 3 Scott, 56; *Monks v. Dykes*, 4 M. & W. 567; *Kearney's case*, *Alcock's Reg. Cas. 22*.

8. *Lodgers*.—The claimant occupied three rooms on the first floor of a house in which the landlord resided; he had a key to the outer door; there was no internal communication between the three rooms, each having a separate door opening upon the landing place. *Held*, that he was not entitled to be registered. *Bage*, App.; *Perkins*, Resp., 8 Scott, N. S. 983.

9. *Non-appearance*.—Where neither appears, the case will be struck out of the list, and it will not be restored unless the party seeking its restoration properly accounts for his absence when the case was called on. *Wansey*, App.; *the Overseers of St. Peter-le-Poor*, 8 Scott, N. R. 992.

10. *Notice of claim*.—The name of the property, in respect of which a right to a county vote is claimed, or the name of the occupying tenant, is only required to be inserted in a notice of claim, and in the list of county voters published by the overseers, where the house is not situate in a "street, lane, or other like place." *Eckersley*, App.; *Barker*, Resp., 8 Scott, N. R. 899.

11. *Notice of objection*.—A notice of objection, and also the duplicate notice, where notice of objection is sent by the post, must be personally signed by the objector. *Toms*, App.; *Cuming*, Resp.; 8 Scott, N. R. 910.

Cases cited: *Schneider v. Norris*, 2 M. & Sel. 286; *Hyde v. Johnson*, 2 Bing. N. C. 776; 3 Scott, 289; *Kine v. Beaumont*, 3 B. & B. 288; 7 Moore, 112.

12. *Notice of objection*.—The note at the foot of the form, No. 10, in schedule B. to the 6 & 7 Vict. c. 18, (the form of notice of objection to be given to overseers in cities and boroughs,) states, "If more than one list of voters, the notice of objection should specify the list to which the objection refers: *Held*, that this note applies only to those cases where the overseers make out more than one list; and therefore, that it is not applicable in the city of London,

where the overseers make out only the list of householders, the list of freemen being made out by the secondaries.

*Held*, also, that the notice served upon the party objected to, need not specify to what list the objection refers—the note not applying to the form No. 11. *Wansey*, App.; *Perkins*, Resp., *Quigley's case*; 8 Scott, N. R. 954.

Cases cited: *Tudball*, App.; *The Town Clerk of Bristol*, Resp. 5 Man. & Gr. 5; 7 Scott, N. R. 486; *Gadsby*, App.; *Warburton*, Resp. 7 M. & Gr. 17; 8 Scott, N. R. 775.

13. *Notice of objection*.—In a borough where two lists are made out by the overseers—one of the parties entitled to be registered under the 2 W. 4, c. 45, s. 27, the other of pot-wallahs—a notice of objection to the name of a party being retained "on the list of persons entitled to vote as householders in the election," &c., is sufficient, though the words "as householders" do not occur in the form given in the 6 & 7 Vict. c. 18; it not appearing that the party could have been inconvenienced or misled by the introduction of those words. *Allen*, App.; *House*, Resp. 8 Scott, N. R. 987. See *Wansey*, App.; *Perkins*, Resp., *Quigley's case*, 8 Scott, N. R. 954.

14. *Notice of objection*.—Whether or not the name subscribed to a notice of objection is so subscribed as to be commonly understood to be the same as that by which the objector is designated in the list of voters, is a question of fact only, and not of law, and therefore one that cannot properly be referred to the court of C. P. *Hinton*, App.; *Hinton*, *Town Clerk of Wenlock*, Resp., 8 Scott, N. R. 995.

Cases cited: *Tudball*, App.; *The Town Clerk of Bristol*, Resp. 7 Scott, N. R. 486; 5 Man. & Gr. 6; *Wilson*, App.; *Thomas* Resp. 8 Scott, N. R. 783.

15. *Qualifications*.—Assessors and collectors of window-tax are not disqualified from being registered as electors. *Dyer*, App. v. *Gough*, Resp., 8 Scott, N. R. 934; *Baxter*, App.; *The Overseers of Doncaster*, Resp., 8 Scott N. R. 945. See *Bedfordshire case*, 2 Lud. 451; 2 Lud. 552, and *Staple's case*, *Middlesex*, 2 Peckw. 116; *Collins v. Gwynne*, 7 Bing. 425; 5 M. & P. 267.

16. *Qualifications*.—A clerk to a receiving-inspector of taxes is not disqualified from being registered as an elector. *Cooper*, App.; *Harris*, *Town Clerk of Cambridge*, Resp., 8 Scott, N. R. 947.

17. *Qualifications*.—A letter-carrier who has resigned his situation within twelve months before the 31st July, being disqualified from voting until after twelve months from the resignation of such situation, by the 22 Geo. 3, c. 41, s. 1, is not entitled to be registered.

*Non-appearance*.—The court will not give judgment for the appellant by reason of the non-appearance of the respondent to support the barrister's decision, but will still require the case to be argued. *Cooper*, App.; *Harris*, Resp., 8 Scott, N. S. 921.

18. *Qualification*.—A qualification to vote in the election for a borough, as an inhabitant

householder, is not preserved by the 33rd section of the 2 W. 4, c. 45, unless it has been retained continuously from the passing of that act. *Jeffery, App.*; *Kitchener, Resp.*, 8 Scott, N. R., 923; *Stanton, App.*; *Jeffery, Resp.*, 8 Scott, N. R. 933.

19. *Trading partnership.*—*A., B., C., and D.*, joined in partnership to work a fulling mill. Money was subscribed by all the partners; with part of which freehold land was bought, which was conveyed to *A. and B.* in fee; with the other part a mill was built on the land, and machinery for the mill was purchased. By a partnership deed executed by *A., B., C., and D.*, the trusts of the land, mill, &c., were declared to be (among other things), that *A. and B.* should stand seised and possessed of all the estates, property, goods, &c., upon trust for the benefit of themselves and their partners, as part of their partnership joint stock in trade. There was provision in the deed that *A. and B.* might borrow money upon mortgage of the stock, property, estates, &c., belonging to the copartnership; and it was declared that the land, mill, &c., should be deemed and considered as or in nature of personal estate, and not real estate, and be held in trust for the partners as part of their partnership stock in trade. *A. and B.* under the powers of the deed, borrowed money for the purposes of the partnership, for which they gave bonds and notes in their own names, but did not mortgage any part of the property.

Held, that such partner had an interest in the realty corresponding with the amount of shares held by him in the partnership.

Held, also, that the money, &c., borrowed had not the effect of mortgages on the shares of the partners. *Baxter, App.*; *Newman, Resp.*, 8 Scott, N. R. 1019.

Cases cited: *Bligh v. Brent*, 2 Y. & Coll. 268; *Bradley v. Holdsworth*, 3 M. & W. 422; *Barber v. May*, 9 B. & C. 489; 4 M. & R. 386; *The Attorney-General v. Mangles*, 5 M. & W. 120; *Ex parte The Lancaster Canal Company*, 1 Mont. & Bligh, 94; 1 Dea. & Chitt. 411; *Buckridge v. Ingram*, 2 Ves. jun. 652; *Townsend v. Ash*, 3 Atk. 336; *Crawshay v. Maule*, 1 Swanst. 521; and the case of the *Vauxhall Bridge Company*, 1 Gl. & Jam. 101.

#### SHERIFF.

In an action by a landlord against the sheriff, under the 8 Ann. c. 14, for removing goods taken in execution, without paying the rent the allegation of removal is material.

Such allegation is not supported by the mere execution of a bill of sale by the sheriff. *Smallman v. Pollard*, 6 M. & G. 1001.

Cases cited: *Smith v. Russell*, 3 Taunt. 400; *Colyer v. Spree*, 2 B. & B. 67; 4 J. B. Moore, 473; *Lane v. Crockett*, 7 Price 566; *Calvert v. Joliffe*, 2 B. & Ad. 418; *Risley v. Ryle*, 10 M. & W. 101; 1 Dowl. N. S. 660; *Sir Anthony Main's case*, 5 Co. Rep. 20 b.; *West v. Hedges, Barnes*, 211; *Henchett v. Kimpson*, 2 Wils. 140; *Peacock v. Purvis*, 2 Bro. & B. 362; 5 J. B. Moore, 79; *Plummer, ex parte*, 1 Atk. 103; *Eaton v. Southby, Wiles*, 131; 7 Mod. 251; *Wright v. Dewes*, 1 A. & E.

641, 3 N. & M. 790; *Risley v. Rye*, 10 M. & W. 101.

And see *Landlord and tenant*.

#### TITHE COMMUTATION ACT.

*Costs.*—The successful party in an issue directed under the Tithe Commutation Act, 6 & 7 W. 4, c. 71, s. 46, is entitled to costs, unless he had been guilty of some misconduct or bad faith, or has succeeded partially only; and this although the commissioners had previously decided in favour of the other party. *Earl of Stamford v. Dunbar*, 14 M. & W. 151.

See 13 M. & W. 822.

[We have thus presented our readers with the 1st section of the *Common Law* part of our Digest; continuing the "Analytical Digest," which we have separately published for 14 years. We depart from the plan so long pursued with due deliberation; but perhaps it may be an improvement, where the decisions turn on the peculiar circumstances of a case which, in all human probability, will never happen again, that such decisions be omitted altogether. The safer course will be to make such selections of the facts as are sufficient to lead to the legal conclusion, and refer to the report for the rest. It will also be desirable in those cases, of which contemporaneous reporters publish their several versions, to consolidate the statements, or extract our own view of the result, and refer to both authorities.]

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

ENLARGING PUBLICATION UNDER THE NEW ORDERS.—WORDING OF NOTICE OF MOTION.

IN *Daniel v. Hill*, reported *ante*, p. 318, the Vice-Chancellor of England refused to enlarge publication. The only fact necessary to mention in addition to the statement contained in the above report, is the dismissal by his Honour of a prior application on behalf of the defendant, for an order to enlarge publication. The notice of motion not specifying *before whom* the court would be moved, was held to be irregular; but leave was granted to serve a fresh notice for the ensuing day. The subsequent motion having been refused and both of them dismissed with costs.

Mr. *James Parker* now appealed from the decisions of his Honour, and endeavoured to justify the delay of the defendant, and to prove that the plaintiff had not been thereby prejudiced. The cause having been set down in Trinity Term last, could not come on before the following Hilary Term, 31st Order of No-

vember 1831; and the examiner's book being full until the 7th of February, the cause could not possibly be heard before the 14th; until which day it was prayed that publication might be enlarged. With respect to the first notice of motion, Mr. Parker contended, that it was sufficiently definitive, being headed "In Chancery," and marked "Vice-Chancellor of England." There is no general order specifying the terms in which notices of motion are to be worded. He asked for the costs of both motions. [Lord Chancellor. I think the distinction of the Vice-Chancellor is rather refined. All that the court requires is, that the notice shall intimate where the motion will be made. The plaintiff was not misled in the present case, for counsel appeared and took objection to the form.]

Mr. Rolt, for the plaintiff, submitted, that it was the universal practice to express in the notice before whom it was intended to move; *primâ facie* the Court of Chancery meant the Court of the Lord Chancellor. But the defendant was not entitled to the costs of the first motion, having served a second notice before appealing. As to enlarging publication, it was not for the plaintiff to show that he would be thereby prejudiced; and if the court granted such request merely upon a defendant averring that the plaintiff would not be prejudiced, and that the cause could not come on until a certain day, these applications would become matters of course, and might be made to the Master. It was possible that an inconvenience might accrue to the plaintiff in this instance; the cause might be transferred from the court of the Vice-Chancellor of England, as it was generally understood that Vice-Chancellor Wigram's paper was nearly exhausted.

The Lord Chancellor was not satisfied with the defendant's affidavit: it did not sufficiently show activity on his part or account for the procrastination with which he was charged; but as the plaintiff would not be delayed by the court granting this indulgence, the registrar might draw up the order required by the defendant, upon his paying the costs of the present application and those in the court below. Concerning the omission in the first notice of motion, his lordship said, that he should not have given such a decision as the Vice-Chancellor's.

Publication enlarged until the 14th Feb.  
*Daniel v. Hill.* Jan. 31, 1846.

#### Rolls Court.

##### PARTIES.—SUPPLEMENTAL BILL.

To an administration suit by legatees, some of the next of kin who were contingently interested in the estate were made parties. By supplemental bill, others of the next of kin were brought before the Court. Held, that the executors were proper parties to the supplemental bill.

THIS was a suit for the administration of an estate on behalf of infants by legatees, whose interest was liable to be divested in favour of

the next of kin, if they should die under age. Some of the next of kin were made parties to the bill. In the progress of the suit, it was however discovered, that there were others of the next of kin not before the court; and a supplemental bill was filed for the purpose of supplying the defect. The executors (the defendants to the original bill) were made parties also to the supplemental bill, and now objected that this was unnecessary.

Mr. Kindersley and Mr. J. T. Palmer, in support of the bill, cited *Jones v. Howell*, 3 Hare, 342.

Mr. Boyle and Mr. C. Bett, contra, cited *Greenwood v. Atkinson*, 5 Sim. 419; *Teary v. Stevenson*; and contended that it was necessary to make a defendant to an original bill parties to a supplemental bill, only where there was a contest between the parties brought before the court by it, and those before it in the first instance.

Lord Langdale, after stating the facts of the case, said, that it appeared to him that the executors were proper parties to the supplemental suit, because it brought before the court persons to whom, if the contingency on which the interest of the legatees was divested occurred, they would have to account. He was not called upon to decide whether the executors were necessary parties to such a bill, but they certainly were proper parties; and therefore the objection that they were not made parties is not sustainable.

*Parker v. Parker.* Jan. 19, 1846.

#### 32ND AND 33RD ORDERS OF 1845.

Mr. Cooke applied upon these orders, for leave to serve a *subpœna* upon a defendant resident at Tillemont, in Belgium, by service upon his wife, who was also a party to the suit, with whom he resided; he being of unsound mind. He proposed to allow fourteen days for the service of the *subpœna*; fourteen days after service, within which appearance should be entered; and fourteen weeks after the entry of the appearance, for putting in the answer.

Lord Langdale made the order, upon the understanding, that appearance should not be entered for the defendant without the leave of the court.

*Biddulph v. Darrell.*

#### Queen's Bench.

(Before the Four Judges.)

##### ATTORNEYS.—DUTY ON ADMISSION UNDER 9 GEO. 4.

An attorney who has been admitted to practice in the Court of the County Palatine of Lancaster, on payment of 60*l.* stamp duty on articles of clerkship, is required under the 9 Geo. 4, c. 49, s. 4, on admission to the superior courts at Westminster, to pay an additional duty of 120*l.*

After an attorney has been admitted to practice in the superior courts, on payment of

*duty which is afterwards found to be insufficient, this court will entertain an application to strike him off the rolls, unless the additional duty is paid.*

THE Attorney-General, Sir F. Thesiger, had obtained a rule, nisi, calling on one Miles Myers to show cause why his name should not be struck off the roll of attorneys, on the ground that he had been improperly admitted, the amount of duty on articles of clerkship required by 4 Geo. 4, c. 49, not having been paid. Mr. Myers had been admitted an attorney of the court of the County Palatine of Lancaster, and upon his being admitted to practise in that court, he paid 60*l.* stamp duty. He was afterwards admitted an attorney of the superior courts at Westminster, and an additional sum of 60*l.* stamp duty was paid, which it appeared by affidavit, he was told at the stamp office, at Somerset House, was the amount of duty he would be required to pay under the statute 9 Geo. 4, c. 49, s. 4. It is now contended that a further sum of 60*l.* ought to have been paid when he was admitted an attorney of the superior courts.

Mr. Jervis and Mr. Petersdorff showed cause.

The 9 Geo. 4, c. 49, s. 4, provides, that articles of clerkship in the inferior courts may be stamped on the payment of the duty of 120*l.* for admission of the parties to the courts at Westminster, "provided always, that at the time when such articles of clerkship shall be required to be stamped with the said stamp denoting the payment of the said sum of 120*l.*, such articles shall have been previously stamped with a stamp denoting the payment of the duty payable in respect of the same at the date of such articles of clerkship."

The articles of clerkship show that stamp duty to the amount of 120*l.* has been paid, according to the provisions of that section of the act. There are no designating stamps for articles of clerkship, such as are required for bills of exchange and receipts. All that the legislature intended was, that it should appear that the full amount of 120*l.* duty had been paid. If a different construction is put on this statute, this person would have to pay 180*l.* duty, instead of 120*l.* There is no precedent for an application to strike an attorney off the rolls because the full amount of duty has not been paid. The court will only entertain such an application where the party has been guilty of fraudulent or immoral conduct in his character of attorney. If it can be made out that an additional sum of 60*l.* duty is payable, then there are other remedies without applying to strike the attorney off the roll; the Crown may proceed by information or debt for the recovery of such duty.

The Attorney-General Sir F. Thesiger, the Solicitor-General Sir F. Kelly, and Mr. Crompton, contra.

There is no misconduct imputed to Mr. Myers, but the application was made in this form because there were no other means by which the Crown could recover the duty which is alleged to be due. After an attorney has been admitted, the remedy by debt or informa-

tion would not be available. By the Stamp Act 35 Geo. 3, c. 184, penalties are awarded for acts done in violation of the provisions of that act, as for post-dating a bill of exchange, and in such cases the Crown can proceed by debt or information for the recovery of such penalty; but here there is no such remedy. This court is invested with full and ample powers over attorneys, and in the due exercise of those powers, it is called upon to decide whether an attorney who has been improperly admitted can be allowed to remain on the rolls of the court.

The statute 9 Geo. 4, c. 49, requires the payment of 120*l.* stamp duty when he is admitted to the superior courts, in addition to what he has paid on admission to any inferior court. The attorneys practising in the Court of Great Sessions, in Wales, were in a different situation under 11 Geo. 4, and 1 Will. 4, c. 70, s. 27, because in that case the courts were abolished. (Stopped by the court.)

Lord Denman, C. J. I have no doubt that this gentleman is liable to make this additional payment. It would have been as well if the question had been presented to us in another form, so that the party should never have been left liable to have it said that he had been struck off the rolls. No imputation however rests upon this gentleman's character; it would therefore have been better had the objection been taken at the time the admission to the Rolls was applied for.

Mr. Justice Coleridge. I am of the same opinion as to the question of liability. I do not wonder that some objection should be felt as to the form of the application, but it should be remembered that there was nothing in itself objectionable in the application to strike an attorney of the rolls. It was the cause for which the application was made that rendered it an imputation on the character of the individual. Some gentlemen apply to be struck off the rolls in order to be called to the bar; and this application might be considered in the same way. The question after all is nothing but one upon the construction of the 9 Geo. 4; and I am clearly of opinion that upon the construction of that statute the additional 60*l.* must be paid.

Mr. Justice Wightman concurred.

The rule was ordered to be discharged on the payment of the money; otherwise to be absolute. No costs.

*In re Miles Myers.* Q. B., Hilary Term, 1846.

#### Queen's Bench Practice Court.

AWARD.—WHEN NOT SUFFICIENTLY FINAL.

*After declaration (in which there were two counts), but before plea, "all matters in difference in the cause" were referred by a judge's order to the award of an accountant, the costs of the cause to abide the event of the award, and the costs of the reference and award to be in the discretion of the arbitrator. The award (not saying that it was made "of and concerning the pre-*

*mises," directed that the one party should pay to the other a certain sum, without stating upon what account. Held, bad, inasmuch as it was uncertain upon what account the sum awarded was to be paid, and as there was no finding upon which the costs of the cause could be taxed.*

THIS was a special action on the case for a false warranty upon the sale of guano, whereby the plaintiff's lands had been injured, and he had become liable in damages to other persons to whom he had sold it. After declaration, but before plea, "all matters in difference between the parties in the cause"<sup>b</sup> were referred, by a judge's order (afterwards made a rule of court) to an accountant, by which it was amongst other things ordered, "that the costs of this action shall abide the event of the award, and that the costs of the reference and award shall be in the discretion of the arbitrator." The arbitrator by his award, after reciting the order of reference, and that he "had taken upon himself the burthen of the reference," that he had "examined all such witnesses as were produced, and heard and duly weighed, &c., the several allegations, &c., before him," "by and on behalf of the parties," awarded, "that J. N. H. [the defendant] do and shall pay, &c., to J. C. [the plaintiff], on, &c., the sum of 167*l.* 6*s.* 2*d.*," and "that the costs of the said reference and of this my award and all other costs connected therewith shall be borne and paid by the said J. N. H."

*Crompton* having obtained a rule *nisi*,<sup>a</sup> for setting aside the award, upon the grounds that the arbitrator had not decided upon the action, and that it did not appear which party was entitled to succeed therein, or which of them was entitled to all or any of the costs thereof; and that it was not stated upon what account the sum awarded was to be paid;—

*Heath* (*Jervis* with him) now (Jan. 23rd) showed cause. It did not appear, he said, that there were any matters in difference other than those in the cause; and, therefore, the sum awarded must be presumed to be in respect of the action alone. Had the arbitrator expressly stated that he awarded "of and concerning the premises," there could be no doubt as to the validity of the award, but as it must be assumed that there were no other matters in difference, the omission of those words is immaterial. *Gray v. Gwennap*, 1 B. & Ald. 106. Nor was it necessary that the arbitrator should find upon each count, inasmuch as the reference

was before plea. Cases in which it has been decided that the award must decide upon each *issue* separately, are inapplicable; for in all of them the defendant had either pleaded or the cause had been referred after issue joined. *Kilburn v. Kilburn*, 13 M. & W. 671, (where most of the decisions were reviewed), was a case of that kind. The more recent case however of *Bearup v. Peacock*, 14 M. & W. 149, is a direct authority, that where a cause in which there is a declaration containing several counts, is referred before plea, a finding upon each count is unnecessary. But, at all events, whether the award be uncertain or not with regard to the costs of the action, the court will not set it aside altogether. Had the arbitrator awarded in favour of the defendant in the action, he would only have been entitled to costs; and as the plaintiff (should the court be against him) is willing to abandon those costs, the remainder of the award may stand. *England v. Davison*, 9 Dowl. 1052, *Maloney v. Stockley*, 4 M. & G. 647.

*Crompton*, contra. The defendant's affidavit shows that there were other matters in difference;<sup>c</sup> but however that may be, the award is so loose that it is quite uncertain as to what the arbitrator has taken into consideration and decided upon. The uncertainty affects the whole award; for though the costs of the action be abandoned, it is impossible to see that the sum awarded was to be paid in respect of the action or of other matters in difference, or even whether in respect of any of the matters referred. *Pearson v. Archbold*, 11 M. & W. 477. The masters cannot say whether plaintiff or defendant is entitled to the whole costs, or whether each of them is entitled to some in respect of one count. *Bearup v. Peacock* is a very strong case, and before that decision it was always considered to be necessary to award separately upon several counts as well as upon several pleas or issues. *Watson on Awards*, ed. 1836, p. 161.

*Williams, J.* It seems to me that the arbitrator has failed to decide upon the questions submitted to him. He has awarded that a sum of money shall be paid in respect of something or other, without saying what. Now unless he had decided upon the action, and further decided in favour of the plaintiff, how can costs be awarded to the successful party? In *Gray v. Gwennap*, though the award in that case was not expressed to be "made of and concerning the premises," yet Lord Tenterden thought that those words were of considerable importance. It is unnecessary to say what might have been the effect of their introduction in this case; but I think that the award, as it now stands, is uncertain, and that this rule must therefore be made absolute.

Rule absolute.

*Crosbie v. Holmes.* Hilary Term, Jan. 23, 1846.

<sup>c</sup> See note (a).

<sup>a</sup> Which was drawn up on reading the defendant's affidavit, and a copy declaration and award thereto annexed, and the rule by which the judge's order was made a rule of court. The judgment did not turn upon the matter of the affidavit; and any statement of the latter is therefore omitted.

<sup>b</sup> A submission of "all matters in dispute between the parties in the cause" is a general submission; but a submission of "all matters in dispute in the cause between the parties" is confined to matters in dispute in the cause.

**Exchequer.**

**SHERIFF.—INTERPLEADER.—TRESPASS.**

*A claim having been made to certain goods seized by the sheriff under a fi. fa., an interpleader order directed the goods to be sold, and the money paid into court to abide the event of an issue. The issue was tried and found for the claimant, who then brought an action against the sheriff for breaking and entering his dwelling-house, and seizing and converting his goods. Held, that the sheriff was entitled to have struck out of the declaration so much as related to the goods, and that an application for that purpose, after time to plead, was not too late. Held, also, that if the claimant had sustained any special damage, that fact should have been stated to the judge, and semble, in such case he would have no jurisdiction to make any order.*

A sheriff having seized certain goods under a writ of *ferri facias*, a third party claimed the goods, upon which the sheriff applied for relief under Interpleader Act, when it was ordered that the goods be sold, and the money paid into court to abide the event of an issue between the claimant and the execution creditor. The issue was tried and a verdict found for the claimant. The claimant then brought an action of trespass against the sheriff for breaking and entering his dwelling-house, and seizing and taking his goods and converting and disposing of the same to his own use. A rule had been obtained calling on the plaintiff to show cause why so much of the declaration as charged the defendant with seizing and taking the goods, and converting and disposing of the same to the defendant's use, should not be struck out.

*Humfrey* showed cause. First, the application is too late. The writ issued on the 9th October, the declaration was delivered on the 20th November, and on the 28th the defendant took out a summons and obtained time to plead. The defendant should have applied immediately after the delivery of the declaration, and before he took a fresh step. [*Pollock*, C. B. There is no such rule in cases of this sort. Where a sheriff acts under an interpleader order, the court may give effect to it at any time. I should be disposed to lay down as a general rule, that it is never too late to stay proceedings where a manifest injustice would be done by allowing them to go on.] [*Alderson*, B. Why should a party be permitted to charge the sheriff with an act done under the authority of the court? For breaking and entering the house the plaintiff ought to have his action; but when the goods have been sold by order of the court, the owner of the goods ought not to be allowed to sue the sheriff for the seizure, or it would be useless to protect the sheriff at all.] The plaintiff claims compensation for special damage sustained in his trade and business, in consequence of the seizure of the goods, and if he is not allowed to sue in respect of such seizure, there would be an injury without a remedy.

*Gray*, who appeared to support the rule, was not called upon.

*Pollock*, C. B. The rule must be absolute to strike out of the declaration all the goods included in the interpleader order. Although it may be a great hardship to have goods seized and sold, yet if the party has thereby sustained any special damage, he should mention that fact when the matter is before the judge, and in such case it is doubtful whether the judge could make any order without consent. Here, however, there does not appear to have been the slightest suggestion that the plaintiff had sustained any special damage in consequence of the seizure. The goods are sold by order of the judge, and it would be very unjust to make the sheriff responsible for the act of the court. We cannot protect him against the trespass in entering the house, but with respect to the seizure of the goods, it would be an opprobrium to the law to allow the party to go on.

*Alderson*, B. Under the Interpleader Act, the applicant for relief is to make affidavit that he is ready to bring into court, or to pay or dispose of the subject matter of dispute, in such manner as the court may direct; and the court is to make such order as may be just and reasonable. Therefore, the judge is vested with a discretion over the matter which the sheriff brings before him, namely, the seizure of certain goods already in his possession. If then the judge, in the exercise of his discretion, directs the sheriff to sell the goods, it would be a monstrous proposition to say, that the sheriff is to be responsible because he has sold the goods under the authority of the court. If, in such a case, we permitted an action to be brought, we should be doing a grievous injustice to an officer of the court.

*Rolfe*, B. I have some doubt whether the legislature meant that there should be an interpleader at all, except it disposed of everything. The judge is to exercise his discretion as to whether he shall make an order or not, and if he sees that there really is any question beyond the mere property in the goods, I am inclined to think that he has no jurisdiction. But after an order has been made, to say that the sheriff is to be open to another action because he has acted under the order, seems to me quite preposterous.

Rule absolute.

*Abbott v. Richards.* Hilary Term, 27th January, 1846.

**CHANCERY CAUSE LISTS.**

*Sittings after Hilary Term, 1846.*

**Lord Chancellor.**

Day to	Strickland	Strickland	} appeal
be	{ Ditto	Boynton	
fixed	{ Ditto	Strickland	
Abated	Millar	Craig	do. pt. hd.
To fix	{ Vandeleur	Blagrave	} appeal
a day.	{ Crosley	Derby Gas Co.	
			do. pt. hd.



Ladbrooke	Smith	appeal
Hitch	Leworthy	do.
Coore	Lowndes	do.
Minor	Minor	3 appeals
Drake	Drake	appeal
Dalton	Hayter	do.
Baggett	Meux	do.
Payne	Banner	do.
Dobson	Lyall	do.
Moorat	Richardson	do.
Millbank	Collier do. want of parties	
Deeks	Stanhope	3 appeals
Wiltshire	Rabbit	appeal
Archer	Hudson	do.
Turner	Newport	do.

Attorney-Gen. { Masters & Wardens, &c. of the City of Bristol. } appeal

Trulock	Robey	appeal
Youngusband	Gisborne	do.
Courtney	Williams	do.
Whitworth	Grogan	do.
Bush	Shipman	do.
Black	Chaytor	do.

{ Mitford Reynolds exons. by order  
{ Johnson Ditto fur. dirs. by order

Thwaites	Foreman	appeal
Watts	Lord Eglinton	do.
Curson	Belworthy	do.
Watson	Parker	do.
Dietrichson	Cabbura	do.
Bellamy	Sabine	do.

Attorney-Gen. Malkin cause by order

Johnson	Child	appeal
Kidd	North	do.
Dord	Wightwick	do.
Carmichael	Carmichael	do.
Hawkes	Howell	do.
Heming	Swinerton	do.
Trail	Bull	do.
Youde	Jones	do.
Wrightson	Macauley	do.
Carpmael	Powis	do.
Lawrence	Bowle cause by order	
Gompertz	Gompertz 3 causes appeal	
{ Morris Howes } appeal		
{ Horsman Abbey } appeal		
Thomas Blackman	do.	

### Vice-Chancellor of England.

#### PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Rigby v. Rigby, plea.  
Boasman v. Craig, defendant's objection as to parties.

Fell v. Gibson.  
Ely v. Ely, dem.  
Bostock v. Shaw, dem.  
Atkinson v. Jones, Atkinson v. Manley.  
26th March, Friswell v. King, fur. dirs. and costs and petn.

To fix a day, Gaches v. Warner, 2 causes.  
Champion v. Champion.  
Gregson v. Hindley.  
To fix a day, Attorney-Gen. v. Earl of Devon.  
Beale v. Boot, fur. dirs. and costs.  
Davis v. Chanter, 3 causes, Same v. Best, advd. by order.

Harris v. Davison.  
Parker v. Day.  
Parker v. Goude.  
Henderson v. Eason, exons.  
Searle v. Law, fur. dirs. and costs.  
Ferrabee v. Lewis, fur. dirs. and costs.  
Harcourt v. McCabe.  
Booth v. Creswick, exons.  
Allibone v. Jones.  
Howell v. Reeves.  
Smith v. Sherwood.  
Legh v. Legh, fur. dirs. and costs.  
Newport v. Lomas, 5 causes, exons. and ditto.  
Farnell v. Hand, fur. dirs. and costs.  
Attorney-Gen. v. Wright.  
Terry v. Wachser.  
Berrodale v. Swann.  
Scott v. Swann.  
Rogers v. Rogers, fur. dirs. and costs.  
Horner v. Billam.  
Simpson v. Holt, fur. dirs. and costs.  
Thompson v. Michels.  
Garrod v. Moor.  
Larkin v. Sandle, fur. dirs. and costs.  
Lovett v. Mqs. of Bath.  
Smale v. Beckford.  
Peacock v. Kernot.  
Morrison v. Watkins.  
Patten v. Peploe.  
Scaife v. Stewart, fur. dirs. and costs.  
Wright v. Barnwell, exons. and fur. dirs.  
Greenway v. Buchanan.  
Walton v. Morritt.  
Parker v. Hawkes, exons.  
Davison v. Bagley.  
Brunton v. Neale.  
Peony v. Turner.  
Attorney-Gen. v. Malkin.  
Giffard v. Withington.  
Daniel v. Hill.  
Insole v. Featherstonhaugh.  
Lane v. Durant, exons. and fur. dirs.  
Pocock v. Johnson.  
Coope v. Lewis.  
Evans v. Hunter.  
Attorney-Gen. v. Trevanion.  
Start v. Cooke.  
Blundell v. Gladstone, 4 causes, fur. dirs.  
Hodgkinson v. Barrow, fur. dirs. and costs.  
Colbourn v. Coling.  
Gowar v. Bennett, fur. dirs.  
Hickson v. Smith, at deft.'s request.  
Palmer v. Pattison fur. dirs. and costs.  
Fryer v. Fryer.  
Lee v. Ryle, fur. dirs. and costs.  
Minter v. Wraith, ditto.  
Mason v. Wakeman, exons.  
Feb. 13th, Bilson v. Harris.  
Hemmings v. Spiers, exons.  
Chambers v. Waters, ditto.  
Lord Beresford v. Archbishop of Armagh, fur. dirs. and costs.  
Foster v. Vernon, ditto.  
Johnstone v. Lumb, ditto.  
Bott v. Bott.  
Vale v. Sherwood, fur. dirs. and costs.  
Feb. 13th, Humfrey v. Kersey.  
Haffenden v. Wood, exons.  
Branscomb v. Branscombe, fur. dirs. and costs.  
Appleyard v. Owers.  
Feb. 13th, Myers v. Perigal.  
Conquest v. Lenaghan.  
Broag v. Robinson.  
Wallis v. Sarel.  
Hardwick v. Merriman.

Bate v. Bate.  
Whitcombe v. Deakins.

**Vice-Chancellor Knight Bruce.**

**CASES, FURTHER DIRECTIONS, AND EXCEPTIONS.**

Feb. 13th, Hobson v. Everett, Hobson v. Ferraby, Hobson v. Ferraby, suppl. bill, Ferraby v. Hobson, Ferraby v. Ferraby.

To fix a day, Sutherland v. Cooke, Same v. Jackson, fur. dirs. and costs.

S. O., Hulkes v. Hulkes.

Feb. 20th, Goodwin v. Goswell.

Feb. 27th, Watts v. Spottiswoode.

Attfield v. Williams.

Lew v. Jackson.

Stewart v. Bushby.

Dalton v. Lambert.

Oldknow v. Slater.

Anthony v. Graham.

Hewells v. Spencer.

Baker v. Grocer.

Roebuck v. Habershow.

Hall v. Lack.

Feb. 14th, Gifford v. Beakley.

Say v. Kensit.

Allen v. Leach.

Gawen v. Gove.

Jones v. Jones.

Thomson v. Thomaon, 3 causes, fur. dirs. and costs.

Plomer v. M'Donough.

Waddington v. Yates.

Sainthill v. M'Dowall, fur. dirs. and costs.

Burfield v. Davis.

Kenward v. Henty, fur. dirs. and costs.

Garmistone v. Gaunt, ditto.

Feb. 14th, Newman v. Newman.

Morrison v. Sabb.

Passingham v. Selby, fur. dirs. and costs.

Foster v. Sadler.

Master v. Lapremandays.

Burkitt v. Ransom, fur. dirs. and costs.

Causes transferred from the Master of the Rolls, by order of the Lord Chancellor.

Beavan v. Gibert, exons. 2 sets.

Grose v. Ewer.

Attorney-General v. Clark.

Lambert v. Newark, 4 causes, fur. dirs. & costs.

Smyth v. Lowndes.

Sherwood v. Beveridge.

Bourne v. Brett, Same v. Cooksey, fur. dirs. and costs.

Beavan v. Gibert, exons.

Gee v. Gurney, fur. dirs. & costs.

Man v. Ricketts, Same v. Halifax, exons.

Day v. Holbrook, exons.

Matthie v. Edwards, exons.

Taylor v. Taylor.

Robertson v. Towgood, at defendant's request.

Thorold v. Gylby.

Forbes v. Leening.

Evans v. Jones, Same v. Brown, exon. fur. dirs. and costs.

Gilbert v. Schwesek.

Barber v. Harrison.

Dunning v. Harde.

Gardner v. Gardner.

Hodgkiss v. Hipkiss.

Chalmers v. Watmough.

**Vice-Chancellor Stirlingham.**

**CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.**

Brown v. Whiteway, dem.

Adie v. Walford, Walford v. Adie, Ditto v. Ditto, suppl. cause.

To apply to L. C. Atkinson v. Boyes.

Blay v. Skipworth, fur. dirs. and costs.

Feb. 16th, Jones v. Ross.

Leek v. Porter.

Brookes v. Cotes.

Howse v. Wilson, 2 causes.

Hedge v. Jeffries.

Snelling v. Snelling, 2 causes.

Oliver v. Oliver.

Stephens v. Stephens.

Paternoster v. Paternoster.

Jacob v. Short, 2 causes.

Wolfe v. Granger, 2 causes.

Wilkin v. Nainby.

Fuller v. Stevens, fur. dirs. and costs.

Attorney-Gen. v. Jackson.

Attorney-Gen. v. Healing, 3 causes.

Feb. 14th, White v. Godmond.

Fenn v. Gooday.

Walker v. Watkin.

Butlin v. Masters.

Feb. 14th, Brattle v. Dumbrell.

Robinson v. Purday.

Lister v. Turner.

Beswick v. Hallam, fur. dirs. and costs.

Causes transferred from V. C. of England's List, by order of the Lord Chancellor.

Dew v. Bernard, 2 causes.

Fish v. Palmerston.

Fenn v. Edmonds.

Langton v. Langton,

Ditto v. Ditto.

Higgins v. Franks.

Wallis v. Wallis.

Pawson v. Smith, 2 causes.

Gabriel v. Sturgis.

Shepherd v. Anderson.

Frank v. Waller.

Maugham v. Maugham.

Grigg v. Sturgis.

Freer v. Binney.

Seward v. Yates.

Maugham v. Maugham, 2 causes.

Slater v. Oldknow.

Hewett v. Sewell.

Atkinson v. Parker.

Rochford v. Lambeth, 3 causes.

Reid v. Holmes.

Attorney-Gen. v. Mayor of Exeter.

Wilde v. Woodyatt.

Attorney-Gen. v. Johnson.

Parr v. Bank of England.

Christ's Hospital v. Attorney-Gen.

Farramore v. Greenalade.

Baynton v. Manning.

Starkey v. Underhill.

Chapman v. Cannon.

Nicholson v. Smith.

Hammond v. Smith.

End of Causes transferred,

Freeman v. Tatham.

Donaldson v. Fairfax, fur. dirs. and costs.

Bishop v. Wise.

Tilleard v. Pay, fur. dirs. and costs.

Smith v. Tuely, ditto.

## COMMON LAW SITTINGS.

Exchequer of Pleas.  
After Hilary Term, 1846.

## MIDDLESEX.

Monday . . . Feb. 2	Common Juries.
Tuesday . . . 3	} Customs & Com. Juries.
Wednesday . . . 4	
Thursday . . . 5	
Friday . . . 6	} Common Juries.
Saturday . . . 7	
Monday . . . 9	
Tuesday . . . 10	Stamps and Com. Juries.
Wednesday . . 11	} Special Juries.
Thursday . . . 12	
Friday . . . 13	
Saturday . . . 14	
Monday . . . 16	
Tuesday . . . Feb. 3	To Adjourn only.
Tuesday . . . 17	Adj. Day, Com. Juries.
Wednesday . . 18	} Common Juries.
Thursday . . . 19	
Friday . . . 20	
Saturday . . . 21	
Monday . . . 23	} Special Juries.
Tuesday . . . 24	
Wednesday . . 25	
Thursday . . . 26	
Friday . . . 27	
Saturday . . . 28	

The Court will sit at ten o'clock.

## SITTINGS IN BANKRUPTCY.

## Court of Review.

February .. .. 16	March .. .. 9
Ditto .. .. 18	Ditto .. .. 16
Ditto .. .. 23	Ditto .. .. 18
March .. .. 2	Ditto .. .. 23
Ditto .. .. 4	

April 22nd will be the first day of Sittings in Term, the other days depend on the seal days not yet fixed.

## PROCEEDINGS IN PARLIAMENT.

## House of Lords.

## RAILWAY BILLS.

THE House of Lords, on the 6th instant, resolved, That such portion of the Standing Order, No. 224, as requires from the promoters of railway bills a deposit of one-tenth of the amount subscribed, be suspended with respect to all such railway bills as shall commence in the House of Lords during the present session.

That no such railway bill be read a first time in this house unless a deposit of one-twentieth part of the amount subscribed shall have been made on or before the 6th of February.

That no such railway bill be read a third time until a further deposit of one-twentieth part of the amount subscribed shall in like manner be made.

Resolved, also, That this house will not receive any petition for a railway bill, after Monday the 23rd of this instant February.

## House of Commons.

## RAILWAY BILLS.

The following are the resolutions of the house on this subject:—

1. Resolved, That with respect to any railway bills which shall be brought from the House of Lords during this session, this house will not insist on their privilege with regard to the clauses fixing and regulating rates and tolls in such bills.

2. Resolved, That with a view of affording early and increased means of employment in Ireland, it is expedient to give facilities for the early consideration of Irish railway bills; and that, for the attainment of this object, all such railway bills should in the present session commence in the House of Lords.

3. Resolved, That all bills which compete with, or ought to be considered in connection with any bills, the promoters of which shall prove themselves entitled to the privileges agreed to be granted in certain cases by the resolutions of this house, of the 7th July last, shall commence in the House of Lords.

4. Resolved, That the parties promoting Railway bills, which, by the above resolutions, are to commence in the House of Lords, may (notwithstanding any proceeding respecting such bills in the House of Lords) prove before the committee on petitions of the House of Commons, that they have complied with the standing orders of this house, and the report of such committee shall be ordered to lie on the table. If the committee should report that the standing orders have not been complied with, their report shall be referred to the committee on standing orders, whose report shall be ordered to lie on the table.

5. Resolved, That when a railway bill shall have been brought from the Lords, it shall be read a first time, and referred to the select committee on petitions for private bills, who shall report whether the standing orders have been complied with, or whether any report with reference to substantially the same bill has been previously laid on the table of the house.

## THE EDITOR'S LETTER BOX.

WE are aware, as mentioned by a correspondent, that the government intend carrying out the Small Debts Act of last session (8 & 9 Vict. c. 127) by means of a supplemental act. We believe that the judges or assessors of these extensive courts will be barristers or attorneys. "The channels of application" for the appointment vary, according to the existing patronage, as directed by the 8 & 9 Vict. c. 127. Where the present appointments are vested in the commissioners of courts of request, it will be continued, unless the intended act should effect an alteration.

Appointments of this nature will be of importance in many instances, but the successful applicants must of course abandon their practice. The bill however will no doubt be stoutly opposed.

The letter on examination prizes shall be noticed at the first opportunity.

# The Legal Observer.

SATURDAY, FEBRUARY 21, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## JUDICIAL ARREARS IN THE HOUSE OF LORDS.

THE state of the appellate business of the House of Lords demands, we must say, the attention of government; for it is the first duty of government not only to secure the administration of justice but to preclude undue delays. By the Cause List it appears that there are set down for hearing, upwards of one hundred appeals and writs of error from the different superior courts of England, Scotland, and Ireland. But besides those included in this list, we know that there are several other causes, twenty at least, which though not actually entered for hearing, are nevertheless so near maturity, that they may and ought properly to be reckoned as a portion of this heavy but not unexampled<sup>a</sup> arrear, with which the Lords have now to contend at the commencement of the parliamentary session. Let it also be remembered, that independently of business properly *appellate*, the Lords, in the exercise of their high judicial functions, have to investigate peerage questions upon references from the Crown—a branch of business very critical, and consuming of necessity much of their time. They have likewise to inquire into the claims of Scotch and Irish peers, who seek to vote in their respective countries at the election of their representatives in the House, under the Scotch and Irish acts of union. Some application of this sort makes its appearance before their lordships almost every other judicial day of the session—it being the practice of the House, (exceedingly convenient to suitors,) to receive the evidence of witnesses from day to day as they

may happen to be within reach—the whole being taken down by the short-hand writer, and afterwards printed for the consideration of the House before judgment is delivered. Another fertile source of interruption to the progress of business properly *appellate*, is to be found in the circumstance of the House of Lords very frequently interposing its judicial authority upon proceedings which come before it in a legislative form—that is to say, by way of *bill*. Thus, in the Townshend peerage case, which was the subject of so much debate and argumentation two years ago—the proceeding was not judicial,—it commenced by bill,—but the Lords upon the second reading determined to hear counsel and examine witnesses. Several days were occupied in this investigation, which was conducted, not in the evenings which are usually appropriated to legislative business, but in the daytime, from ten to four o'clock, to the grievous interruption of all other business while it lasted. There is not a session in which several bills are not brought in which require the Lords to carry into action their judicial powers. And these are invariably to be regarded as so many stoppages to the progress of appeals and writs of error. Take for example divorce bills. These average some five or six every session. In 1839, we believe there were ten divorce bills. The examination that takes place before the Lords on these applications is peculiarly rigid, and occasionally protracted. Practically the entire *onus* and responsibility of the inquiry rests on the upper house—the necessity of referring to the Commons at all in such cases being, in fact, an oppressive formality, productive of no good consequence whatever, although beset with innumerable bad ones.

<sup>a</sup> As proof of this, see *Legal Observer* of 13th December last.

Our readers will hardly credit what we affirm when we state, that in the House of Commons there is an officer, (one of the members, be it observed,) who enjoys the distinction of being denominated the *lady's friend*. This gentleman has duties to perform. He on every divorce bill sent down from the Lords moves a clause to be inserted in the bill, compelling the injured husband to make a provision for the woman who has disgraced him. The functions of this officer and the success which attends them, prove a fine encouragement to collusion between married parties—and show, if proof were wanting, how ridiculous it is to entrust to a mob of 600 gentlemen the discharge of duties infinitely more important and difficult than any performed by our highest and most accomplished courts of justice. The “*lady's friend*” is, we believe, now introduced for the first time to the notice of the profession. It is something to know that there is such a functionary *in rerum natura*.

If our law reformers who weary us by perpetual tinkering at things which work well enough in practice, would set seriously to work to remove this plague-spot from our social institutions, (the existing system of divorce *a vinculo* by parliament,) we should applaud them to the echo. With your genuine reformer of the law, however, nothing can go down without a dash of utopianism. But this by the way. We have, we think, said enough to show, that the judicial duties of the House of Lords imply something more than the mere disposal of appeals and writs of error. The question is, in what manner are those duties to be performed so as to get rid of the arrears, and insure an adequate amount of progress for the future. That question is not the less urgent because not admitting of being very easily answered.

But first let us for a moment consider how the injury of delay in the last resort operates upon litigants. As regards appeals from the English and Irish courts of equity, it is true that execution is not necessarily arrested by the appeal. The court below may, notwithstanding the appeal, proceed to carry the decree or order complained of into effect. But in general the court is slow to do this, unless it clearly appears that the appeal is frivolous, or unless it be a case in which the execution of the decree may be granted without prejudicing the interests of parties, in the event of an ultimate reversal by the House of Lords. In other cases the court below, or it may be the House itself, is often applied to for the

purpose of suspending all further proceedings till the fate of the appeal is determined. Upon writs of error, however, there is and always must be a stoppage of proceedings below, because the record is carried up to the court of appeal for examination. And in all Scotch causes (whether by writ of error or by appeal) the effect of the resort to the Lords is invariably and in all cases, without exception, to paralyse the inferior tribunal till the ultimate decision of the House is obtained.

This being so, the consequence in these cases is, that if a litigious party were now to bring a writ of error or appeal in the House of Lords, his opponent would be deprived of all benefit from his judgment or decree for three or four years at the very least. This, we say, is a state of things that ought not to be continued.

At present the appellate business of the House is chiefly discharged by amateurs. The Lord Chancellor indeed sits on the woolsack on Mondays and Tuesdays. But Lords Brougham, Cottenham, and Campbell sit on Mondays, Tuesdays, Thursdays and Fridays. These three noble and learned persons are under no obligation of attendance. They, to be sure, give up voluntarily their time and their labour to the public service. For this they are entitled to the highest commendation. They certainly work harder than any preceding race of ex-chancellors. But it would be absurd to affirm, that they are as sedulous, and as methodical in the hearing of appeals, as they would be if their labours in this capacity were properly remunerated. Suppose the ex-chancellors, or certain of them, who now enjoy retiring pensions for past services, were to be told that they should have an additional compensation (say 2,000*l.* a year each) in consideration of the judicial business of the House of Lords. We know what the result would be. They would set to work no longer as amateurs, but as paid servants of the public. They would have a *duty* to perform—for the non-performance of which there would be the thing called responsibility. Instead of sitting four days a week they would sit six. Instead of long vacations at Easter and short ones at Whitsuntide, there would be constant uniform hearing of causes *de die in diem* till this frightful arrear of business was cleared off, and afterwards all would go on smoothly and satisfactorily. Thus a court would be established at once, the cheapest in the empire, and the most important in its functions.

## PURCHASE AND SALE OF RAILWAY SHARES.

THE judgment of the Court of Exchequer in *Young v. Smith*, which was published amongst our original reports during the week in which it was pronounced,<sup>a</sup> is one, the importance of which can hardly be exaggerated; but from some articles which have appeared in the daily and weekly journals, we apprehend that the effect of the decision in that case has been strangely misunderstood. The point—and indeed the only point—decided in *Young v. Smith* was, that a contract made with a broker after the 5th of September, 1844, to purchase shares in a railway company not completely registered under the stat. 7 & 8 Vict., chap. 110, is not an illegal contract within the 26th section of that act. Several distinguished members of the bar, who had been previously consulted on the subject, were of opinion that railway companies, as well as other undertakings, required complete registration under the act; and if this construction of the statute were correct, it followed that all contracts for the purchase or sale of railway scrip, in companies started after the 5th Sept., 1844, and not completely registered, would have been illegal, and therefore incapable of being enforced at law. This construction of the statute 7 & 8 Vict., has now been authoritatively declared erroneous by the judgment of the Court of Exchequer, which, without the slightest intention of impugning its correctness, we may observe, can only be considered as the judgment of three of the Barons of that court,<sup>b</sup> pronounced contemporaneously with the arguments, and, like all judgments of the court on demurrer, subject to revision upon appeal to the Court of Exchequer Chamber.

Assuming the decision of the Court of Exchequer in *Young v. Smith*, however, to remain undisturbed, it is desirable it should be clearly understood, that the result of that decision is merely, that railway companies requiring the authority of an Act of Parliament, (which, in fact, comprehends all railway companies,) are exempt from the operation of the 26th sect. of the stat. 7 & 8 Vict., c. 110. The court did not, and were not called upon to decide, that other sections of the statute did

not include railway companies; and, indeed, Mr. Baron Alderson, in his judgment, expressly observed, that it appeared to be the object of the legislature, in all the sections of the act down to the 26th inclusive, to legislate for railway companies as well as other undertakings, but that the provisions of the statute subsequent to the 25th section, did not include railway companies. According to this reading of the statute, railway companies are within the operation of the 23rd section, which limits the liability of a shareholder or a subscriber in a company before an act of parliament has been obtained, to the debts necessarily incurred for the establishment of the company.<sup>c</sup>

In the numerous cases in which contracts for the sale or purchase of shares may have been vitiated by fraud, either in the inception of the company, or in respect of the particular transaction which formed the subject matter of the contract, the law, we presume, remains unaltered, and not in any degree affected by the judicial decision to which we have already adverted, or by the act of parliament which, with an equal disregard of meaning and forensic dignity, has been styled “the Staggering Act.”

Independent of the cases in which contracts may be vitiated by fraud, there is another, and we apprehend a very extensive class of cases, which it is not assuming much of the spirit of prophecy to predict, will shortly become the subject of judicial consideration, where letters of allotment

<sup>c</sup> The stat 7 & 8 Vict. c. 110, s. 23, enacts, that on the provisional registration of the company it shall be lawful for the promoters, besides allotting shares and receiving deposits to the limited extent there mentioned, “to perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of parliament; but not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores, or other things as are necessarily required for the establishing of the company, and except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of complete registration, act of parliament, or charter, or letters patent, shall have been obtained, and except in the case of companies for executing such works as aforesaid, contracts for services, in making surveys, and performing all other acts necessary for obtaining an act of incorporation or other act for enabling the company to execute such works.”

<sup>a</sup> Ante, page 295.

<sup>b</sup> Barons Parke and Rolfe were absent during the argument.

and scrip certificates have been purchased, with or without a premium in projected companies, which have been subsequently abandoned. In cases of this nature, the first question that arises is, whether the mere purchaser of scrip who has taken no part in the formation of the proposed company, is entitled to call for the return of the amount paid by him as a deposit, without allowing any portion to be deducted in respect of the preliminary expenses? Upon this point Mr. Wordsworth, in his treatise on the Law of Joint Stock Companies,<sup>d</sup> assuming the provisional agreement or prospectus to be the basis of the contract, says, that "every shareholder who pays his deposit or subscription, on a prospect that the scheme will continue, and does no act rendering himself liable to the expenses of attempting to bring it into operation, may, if it afterwards proves abortive, or is abandoned, without any steps being taken towards carrying it into effect, recover from the projectors the whole of the money advanced by him, without the deduction of any part towards payment of the expenses incurred."

The authority constantly referred to in support of this proposition, is the case of *Nockels v. Crosby and others*,<sup>e</sup> in which the defendants were the directors of a scheme called the British Metropolitan Tontine, and the plaintiff had paid money upon certain shares in that scheme, to which he had become a subscriber upon the terms of a plan or prospectus issued by the defendants. Subsequently, there not being a sufficient sum subscribed to allow of the further prosecution of the scheme, the directors resolved to return to the subscribers the amount of the subscriptions, less the expenses attending the project; and accordingly, the expenses having been ascertained, a sum, equal to the difference between the amount of his paid subscription and his share of the expenses, was tendered to the plaintiff. The plaintiff, however, refused to bear any part of the expenses, and brought this action for the whole amount which he had paid, and it was held that he had a right to recover. In this case it is plain the decision turned mainly on the terms of the prospectus, which formed the basis of the contract.

Another question, more important, perhaps, than that last adverted to, is whether the purchaser of scrip in a contemplated

company, which is abandoned before it has been formed, is entitled to recover back from the purchaser the amount paid by him, as upon a total failure of consideration? The case most frequently relied upon, in support of the affirmative of this proposition, is that of *Kempson v. Saunders*.<sup>f</sup> In that case, the plaintiff purchased shares from the defendant in a projected railway company, which was abandoned before anything was done to carry out the project; and it was held, that the vendor was liable to the purchaser for the money paid, on the ground that the consideration had failed. And *Best*, C. J., who pronounced the judgment of the Court of Common Pleas, is reported to have said:—"The defendant, who was not an original subscriber, sold them (the shares) to the plaintiff, but he sold a nothing, an alleged title of no value; if he bought of another, he may sue the seller, and the seller the party from whom he purchased, till at last we come to the original projectors."

This case, and the words above quoted from the judgment of Chief Justice *Best*, have been frequently referred to in disquisitions recently submitted to the public; but we have not seen in any of these references to the case allusion made to what appears to have been a very important element in the considerations upon which the judgment proceeded, namely, that there was a regulation of the projected company, stating, that all transfers to be valid must be approved by the committee, and that the party who sold the share had not complied with this regulation, so that the transfer by him was not a legal transfer. The principle in support of which the case of *Kempson v. Saunders* is so often cited, appears to be involved in a case of *Lamert v. Heath*, tried on the last day of the sittings at Guildhall, after Michaelmas Term last, before the Chief Baron. The Court of Exchequer afterwards granted a rule to show cause why the verdict taken for the plaintiff should not be set aside, and that rule is now depending for argument. The question, as we understand, suggested on the part of the defendant in that case is, whether a party purchasing that which he contracted to purchase, but which afterwards turns out to be worthless, is entitled to recover back against the vendor, who acted *bonâ fide* in the transaction. The

<sup>d</sup> 5th Edition. p. 246.

<sup>e</sup> 3 Barn. & Cras. 811.

<sup>f</sup> 4 Bing. 5; 12 Moore 44; 2 Car. & P. 366.

decision of that question will bear directly upon many transactions, the parties to which are now in a state of incertitude as to their mutual rights and responsibilities.

It would be idle as well as presumptuous to hazard opinions upon moot points which must speedily become the subject of judicial determination. In directing attention to the various views which have been presented in reference to the liabilities of those who have entered into contracts for the purchase or sale of railway shares, and the leading cases cited in support of those views, we are desirous not so much to enforce any peculiar opinion, as to suggest the expediency of great caution in commencing proceedings, and to fortify the arguments of those who are constantly required to exercise the virtue of patience as well as the power of persuasion, in preventing clients, smarting under the infliction of recent losses, from rushing headlong into the vortex of unsuccessful and it may be ruinous litigation.

## NEW BILLS IN PARLIAMENT.

### REQUESTS FOR CHARITABLE TRUSTS.

THIS bill recites that it is expedient to give greater facility to the disposal of property for religious and charitable uses, and for that purpose to repeal the 9 Geo. 2, c. 36, and to substitute other provisions instead thereof: it is therefore proposed—

1. To repeal the statute of 9 Geo. 2, c. 36.

2. That it shall be lawful for all persons, not being under any natural or civil disability, and according to the powers, estates or interests which they may have, to give or grant, either by will or by deed, or by other suitable instrument or conveyance, any lands, tenements or hereditaments, whether freehold or copyhold, or of customary tenure, or any goods, chattels, stock, money in the public funds, shares in any public or joint-stock company, or other real or personal estate or effects whatsoever, whereof they may be lawfully possessed as the real owners thereof, or whereto they may be lawfully entitled, either in remainder, reversion or contingency, and whether the same be held by them in their own rights, or by others in trust for them, for or towards any religious or charitable uses or purposes whatsoever, which at the time of the making of any such gift or grant, or when the same shall be intended or able to take effect, shall not be prohibited by any law or statute then in force, nor contrary to public policy, in such manner and under such conditions, and subject to such limitations and provisions, as to the persons so giving or granting the same may seem proper, and as

may be by them expressed or declared in such will, deed or other instrument or conveyance, and without any license of mortmain, writ of *Ad quod damnum*, or any other license or authority whatsoever.

Where more than one-half of the donor's property is given, special formalities are required, viz. :—

3. That when any such gift or grant shall be made as aforesaid, whether by will or by deed, or by other instrument or conveyance, and the property, estates or effects, whether real or personal, so given or granted for any such uses or purposes as aforesaid, shall exceed in the value or amount thereof *one-half* of the entire property, estates and effects whereto the testator, donor, or grantor is beneficially entitled, and whereof he hath the power of disposal, every such will, deed or other instrument or conveyance shall, for the purpose of being effectual for the giving or granting of any greater or further proportion than *one-half* of such entire property, estates or effects, for such uses or purposes as aforesaid, be executed by such testator, donor or grantor, in the presence of and be duly attested by at least *three* credible witnesses, one of them being a medical attendant of such testator, donor or grantor, who shall then certify on the back of every such will, deed or other instrument or conveyance, that such testator, donor or grantor is, according to the best of their judgment and belief, of a sound disposing mind, and fully acquainted with the contents of such will, deed or other instrument or conveyance, and that he has executed the same freely and deliberately, without any undue solicitation or influence made to, or practised upon him in that behalf.

The deeds are to be enrolled within three months.

4. Provided that every deed or other instrument or conveyance, not being a testamentary disposition, whereby any lands, tenements or hereditaments shall be given or granted for any such uses or purposes as aforesaid, shall be duly enrolled in her Majesty's High Court of Chancery within *three* calendar months next after the execution thereof, and that no such deed or other instrument or conveyance whereby any property, estate or effects, whether real or personal, shall be so given or granted as aforesaid, shall be revocable or alterable after such execution and enrolment thereof by the donor or grantor, unless a power of revoking or altering the same shall be therein expressly reserved and declared, and every revocation or alteration thereof so made, under and by virtue of any such power as aforesaid shall, in order to its being valid and effectual, be made by deed, which shall be executed in like manner, and be attested and certified by such and the same number of witnesses, and in the same form, as shall have been required or adopted for the deed or other instrument or conveyance so thereby revoked or altered as aforesaid; and every such deed of revocation or alteration as



aforesaid, so far as the same relates to any lands, tenements and hereditaments, shall also be duly enrolled in her Majesty's High Court of Chancery within *three* calendar months next after the execution thereof.

The marshalling of assets is then provided for in favour of creditors.

5. Provided, That nothing herein contained shall be construed so as to enable any testator, donor or grantor, by any such gift or grant as aforesaid, to defeat or hinder the just and lawful claims of any *creditors*, or to prevent the property, estate or effects of any such testator, donor or grantor from being available or answerable, as heretofore, for or towards the payment and satisfaction of all his just and lawful debts, which, at the time of the making of any such gift or grant, or of the same being intended or able to take effect, shall be due and owing, or liable to become due and owing, from any such testator, donor or grantor; but nevertheless, every court having the administration and disposal of the property, estates or effects of any such testator, donor or grantor, shall be authorized and empowered, and is hereby required to marshal the assets of every such testator, donor or grantor, in favour of the religious or charitable uses or purposes to which the same, or any part thereof, may be in any way applicable, and to direct the administration and disposal of all such property, estates and effects in such manner, consistently with the lawful claims of all parties having any interest therein, as shall be most effectual for securing every such gift or grant, and enabling the religious uses and purposes thereby declared or intended, to be permanently and beneficially promoted and fulfilled.

Allowances are also to be made to the donor's relations.

6. That if after the making of any such gift or grant for such uses or purposes as aforesaid, any such testator, donor or grantor shall have died, leaving any parent, wife, child or grandchild, who, by reason and in consequence of such gift or grant, shall have been left destitute or insufficiently provided for, it shall be lawful for every such parent, wife, child or grandchild, to apply to the Lord Chancellor or Lord Keeper for the time being, by petition in that behalf, setting forth all the circumstances of his or her case; and thereupon the said Lord Chancellor or Lord Keeper shall forthwith proceed to inquire into the facts so alleged in such petition, in such manner as to him shall seem most expedient; and if upon such inquiry, the said Lord Chancellor or Lord Keeper shall be fully satisfied of the truth of the said facts, then it shall be lawful for him to make such order as to him shall seem reasonable for allowing to every such parent, wife, child or grandchild, for his, her or their life or lives, or for any shorter period or periods, so much and such proportion of the proceeds or profits arising from the property, estates or effects so given or granted as aforesaid, as may be suffi-

cient for the support and maintenance of such parent, wife, child or grandchild, during any such period as aforesaid, and from time to time to alter or annul such order, and to make such other or further orders and regulations in that behalf as the justice of the case and the wants of the several parties interested may seem to him to require.

Certain powers are then given to trustees, viz.:—

7. That when and so often as it shall appear to the trustees or other persons having the lawful administration or management of any property, estates or effects so given or granted as aforesaid, that the religious or charitable uses or purposes, declared or intended by the testator, donor or grantor in that behalf, are fully satisfied, and that the property, estates or effects in their said administration and management are more than sufficient to fulfil and effect all the said uses or purposes for which the same were so given or granted as aforesaid, it shall be lawful for such trustees or other persons, if they shall see fit, but with the sanction and under the direction of the High Court of Chancery, or where such property, estate or effects have been given or granted for any religious or charitable uses or purposes relating to the worship of the Church of England, or the maintenance of the clergy thereof, or the building or supporting of any churches, chapels or schools in connexion with the said church, with the sanction and under the direction of the bishop of the diocese, to apply any portion of the surplus of the proceeds or profits arising or accruing from such property, estates or effects, from time to time and for so long as to the several parties aforesaid shall seem fit, for or towards such and the like religious or charitable uses or purposes elsewhere, or in other places, where the same may be more especially needed: provided always, that such application of any such surplus shall not in any case be continued to the prejudice of the religious or charitable uses or purposes immediately declared or intended by any testator, donor or grantor, and that in each and every case preference and priority shall be given in any such application to the wants of such parishes or places as may be situate nearest to those which may have been particularly named or intended to be benefited by any such testator, donor or grantor, and that the general religious or charitable uses or purposes by him declared or designed shall as nearly as possible be thereby effected and promoted.

#### GAME LAWS.

THIS bill for the further amendment of the laws in England relative to game, recites the 1 & 2 W. 4, c. 32, and that it is expedient to make some fresh provisions relating thereto: it is therefore proposed to enact—

1. That after the passing of this act it shall

not be lawful for any person, except a licensed dealer in game, to sell game to any licensed dealer in game, unless such person shall be the lord or lessee of a manor or reputed manor, or shall be the gamekeeper of such lord or lessee, acting on account and with the written authority of such lord or lessee, or shall be the owner or occupier of

acres of land at the least; and if any person shall sell or offer to sell any game contrary to the provisions of this act he shall be liable to such penalties and costs as any person is by the said recited act rendered liable to for selling game without having obtained a game certificate, and not being licensed to deal in game; and if any person, whether licensed to deal in game or not, shall buy any game of any person who is hereinbefore prohibited from selling the same, he shall be liable to the same penalties and costs as any person not being licensed to deal in game is by the said recited act rendered liable to for buying game except from a person licensed to deal in game; provided that nothing herein contained shall be deemed to affect or take away the authority given by the said act to any inn-keeper or tavern keeper of selling game for consumption in his own house.

The 2nd section proposes to limit the hours within which game may be bought. The time is left blank in the bill.

It is then provided that dealers in game shall keep an account of their purchases, and that the book be open for inspection.

3. That every person so licensed as aforesaid shall keep a book, in which he shall enter, in the form set forth in the schedule to this act annexed, the day of the month and year on which he shall purchase any game, together with the number and description of such game, and the name and residence of the person of whom he shall so purchase it; and if any such person shall omit or neglect to make such entry he shall forfeit any sum not exceeding for every head of game with respect to which such omission shall be made, together with the costs of the conviction.

4. That every such book shall at all seasonable times be open to the inspection of any of her Majesty's justices of the peace, or of any person duly authorized by warrant under the hand of any two or more such justices in petty sessions assembled to demand such inspection (which warrant may be made available for any period not exceeding twelve calendar months from the date and execution thereof); and every person so licensed as aforesaid shall also produce the same book, whenever thereto required by any justice of the peace, at the hearing of any information or complaint, or other judicial inquiry or proceeding, under the said recited act or this act; and every person so licensed as aforesaid who shall refuse or neglect to produce such book, or to suffer the same to be inspected by any person or on any occasion to or on which he is herein-before required to produce the same, shall forfeit any sum not ex-

ceeding for every such omission, together with the costs of the conviction.

And persons charged with the unlawful possession of game are to account for it.

5. That when any person shall stand charged under the provision of the said act with having unlawfully taken or killed any game, and it shall be proved before the justices of the peace who shall adjudicate upon such charge that such person had any game in his possession or custody at the time mentioned in such information, it shall be lawful for such justices to call upon the defendant to account for the possession of the same, and if he shall not satisfy such justices that such game came lawfully into his possession he shall be liable to be convicted of having taken the same unlawfully.

And possession of snares to be accounted for.

6. That when any person shall be charged, under the provisions of the said act with having unlawfully used any engine for the purpose of taking game, and it shall be proved to the satisfaction of the justices of the peace who shall adjudicate upon the same that such person had at the time mentioned in the information in his possession or custody any snare made or calculated for taking game, it shall be lawful for such justices to call upon the defendant to account for the possession of such snare, and if he shall fail to convince such justices that the same was in his possession or custody without any intent to use the same unlawfully he shall be liable to be convicted of having unlawfully used the same for the purpose of taking game.

The bill then recites that it sometimes happens that game is preserved in excessive quantities, and that great damage is done thereby to the crops growing on lands in the vicinity; it is therefore proposed to enact—

7. That where any damage shall be done by the game to any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing upon any land, open or inclosed, it shall be lawful for the occupier of such land to give notice to the owner or occupier of any land, or the respective owners or occupiers of any lands lying near the land whereon such damage shall be done as aforesaid, of his intention to make the complaint thereof to her Majesty's justices of the peace at some petty session to be holden for the division in which the land whereon any such damage shall be done shall lie, and of the time and place of the holding of such petty session, and at such petty session to make complaint in writing and on oath to two or more of the justices then and there assembled, and to give proof of his having given such notice as aforesaid to the defendant or defendants six clear days at the least before such petty session;

and thereupon it shall be lawful for the justices so assembled as aforesaid, or any two or more of them, to appoint some competent person or persons, not exceeding three, to inquire into and ascertain the amount of such damage, and, as far as may be, what proportion of such damage shall have been done by the game preserved or harboured on the lands of any such defendant, and to award whether any and what sum shall be paid to such complainant by any such defendant, by way of compensation for such damage, and to report their said award to the justices who may be assembled at some petty session for the said division to be appointed at the first-mentioned petty session, or and the justices at such petty session, or any two or more of them, may thereupon adjudge such costs to be paid by either party to the other as they shall think fit; and if the amount of such damages and costs, or of such costs only, to be paid by any one party to any other, shall not exceed the sum of £10, and shall not be paid within six clear days after notice in writing of such award or order given to the party liable to pay the same, (either served personally or left at his place of abode,) it shall be lawful for any justice of the peace of the said division to cause the same to be levied by distress and sale of the goods and chattels of the party ordered to pay the same; but if the same shall exceed the sum of £10, then the same may be recovered by action of debt in any of her Majesty's Courts of Record at Westminster.

8. Power of appeal to the quarter sessions.

9. Provisions of former act extended to this act.

[Some of the provisions in this Bill will surprise our readers. We have not yet heard whether the measure has the sanction of government.]

#### SELECTIONS FROM CORRESPONDENCE.

##### PRACTICE AT THE ACCOUNTANT-GENERAL'S OFFICE.

*To the Editor of the Legal Observer.*

A RECENT occurrence has brought to my mind the great practical inconvenience of the system adopted at the Accountant-General's office, in reference to office copy receipts for monies paid into court, sales, transfers, &c. For instance, when you pay money into the Bank of England, you are then and there furnished with a receipt, such receipt being a printed form filled up and signed in your presence. You take this receipt to the Accountant-General's office and file it, for which a charge is made of 4s. for the office copy of the receipt and Accountant-General's certificate. Instead of having these office copies immediately, you can seldom obtain them, without making a special application, in less than six weeks or two months time, and they are then placed in the office, in files, accessible

to every one who chooses to go and rummage for them, and if you happen to want the receipt two or three months afterwards, you must put yourself to the trouble and inconvenience of searching through four or five hundred of them. In many instances the receipt is not to be found, and you must then incur the expense of a second office copy.

Now I do not think that this monstrosity in-convenient mode of doing business in an office well known to be rigidly exact, would be persevered in, if there were not some one interested in keeping up so wretched a system. Why should not printed forms be kept at the office, and filled in when the party attends to file the receipt, and a proper charge made? If this system were adopted, solicitors would be saved the unnecessary trouble and inconvenience of a morning's hunt for their certificates, and the suitor would save his compulsory gratuity. Q.

#### CONVEYANCING REFORM.

MR. EDITOR.—If any of your readers, or any of their friends, should hereafter be concerned in preparing bills for the reform of conveyancing, I do hope that they will provide an enactment that the mere appointment of new trustees shall clothe them with all the estates, &c., of the old trustees, without the necessity of any conveyance; and that in an agreement between persons liable to the payment of any rent, for the apportionment of such rent, they shall be mutually entitled to the same or the like powers for the recovery from each either of the sums so agreed to be paid in case of default, as the owner of the entire rent is entitled to exercise for the recovery thereof, but without prejudice, of course, to the rights of such owner.

Now that nearly the whole of the kingdom is charged with a tithe rent, it becomes very important to render cross indemnities as easy as possible.

The Tithe Commutation Acts, indeed, contain a provision on that head, but it is troublesome, and must be expensive.

M. W.

#### GENERAL REGISTRY OF DEEDS.

THE following observations of the late Professor Park on the question of a General Registry of Deeds, will, no doubt, be read with interest by most of our readers. The objections are put forth with the candour and fairness of a legislative philosopher,—rather as matters of doubt and difficulty than of dogmatical assertion; but they are all the more entitled to consideration on this account.

The difficulty is—whether the aggregate of inconvenience and expense which would be produced from the necessity of searching the

register and enrolling a memorial, or perhaps duplicate in every transaction relative to real property, would not be of that amount which ought to be considered, on the principles of legislation, as overbalancing the mischief of occasional loss or ruin of individuals by fraud. For if the number of cases in which mischief actually ensues from the want of a public registry be small in proportion to the whole number of transactions concerning real property, while the inconveniences and burden of the remedy proposed would be considerable, at the same time that they would be universal, the soundest principles of legislation would be those which should decline to be moved by compassion for individuals to the imposition of a serious and burdensome inconvenience in the universal transaction of business between the community at large. There are many evils to which individuals are still exposed in the minor dealings of mankind, and which are serious enough in themselves, but for which none would attempt to propose a legislative remedy, because it could only be effected by a machinery of universal comprehension too cumbrous or inconvenient to be submitted to in matters of hourly occurrence. The evils of *over-legislation* have been sensibly felt by the community of this country of late years, enough so, at least, to open the eyes of all men to the necessity of cautiously weighing the inconveniences of a remedy necessarily universal against the evils to be remedied, which are only occasional or individual. It must be never forgotten, that all legislation is a choice of evils, and that preventive legislation by machinery, as it must necessarily be universally comprehensive, must in all cases be enormously out of proportion to the matters to be prevented. If the machinery be so simple and of so little burden as to render this disproportionateness immaterial it is certainly no objection;—and again, if the acts to be prevented involve that degree of public mischief as to make them unbearable, the machinery, however disproportionate or inconvenient, must be submitted to.

As a general principle, transactions relative to property should be as little as possible conditional for their validity on the after-acts of agents, and that men should not go home after having met to execute deeds with the feeling, that it still depends on the fidelity and attention of a professional agent whether those deeds shall or shall not secure their purpose. And if, indeed, as seems to be the prevalent opinion, the doctrine of *noties* is to be abrogated, it may be feared that many cases would occur in which both the temptation and power would be in the hands of the agent, to give fraudulent priorities and to invalidate *bond fide* transactions. I should tremble much at the consequences to the character of English justice, if it afforded no remedy against such acts as these.

It appears to me also, that another question to be attentively investigated is this:—How far a register does really effect that inviolable security which it promises? For if the argument in its favour assumes that the security is ac-

complished by it, as an universal proposition, and upon examination it appears that the security is problematical, then certainly the argument has not really the whole value which it appears to have.

The learned professor, by way of illustration, then described the Middlesex registry as at present “mechanised,” of which he happened to know enough *practically* to have no hesitation in saying, that it did not and could not insure the purposes for which it was created.

“During six months (he says) that I was in the office of a very eminent solicitor, preparatory to my going into the chambers of a conveyancer, it was occasionally my business to ‘search on an abstract’ through the Middlesex registry, and I therefore know something personally of the nature of that operation. And I here wish to observe, in the first instance, that it is all a chance whether the clerk or other person employed in making the search understands sufficiently the devolution of title disclosed by the abstract, or the principles upon which the search should be made in reference to that title, to make his search exhaustive of the risk. The professional friend with whom I was placed, and who was a man of great method and of unwearied assiduity in the business of the office, had made me laboriously familiar with the habit of analysing abstracts on paper before I was entrusted with the duty of searching. But I am not aware that this habit is frequently made a part of professional education, and I have several times been applied to since I have been in practice, by articulated clerks and others, to point the names and dates to which the search was to be directed in abstracts on which I had directed the customary searches in the register—an employment which, of course, a conveyancing counsel cannot take upon himself, and which I have, therefore, been obliged to decline, by referring the applicant for information to some office where regular conveyancing clerks are kept. But we will suppose the clerk to whom the search is intrusted to have succeeded as well as he can in analysing his abstract, or to follow it on the pages of the abstract without an analysis. The title, we will suppose, as to a house or houses in the parish of Marylebone, and to have been forty or fifty years in a family of the name of Taylor, (I will not push the *reductio ad absurdum* as high as Jones,) he has then to search in the calendar of each year, during which a Taylor has been the proprietor on the abstract, and every conveyance which he finds by a Taylor of that christian name, and in the parish of Marylebone in each of those years, he must bring to the test by examination of the memorial, and to do this he must, each and every time, find the book in the presses of the office referred to in the calendar, and he must remove that book (a ponderous *Atlas folio*) to the table or counter in the centre of the office, find the page referred to, and then inspect the

memorial recorded. It is unnecessary to say, that he may be for whole days, and even whole weeks engaged in this manner without any materiality to the business on which he is engaged, and until he gets slovenly and listless by the incessant abortiveness of his labour. But, perhaps he finds a settlement or a trust deed or a will, which, though not specifically describing the property on the abstract, contains a description suspiciously analogous, or a sweeping clause or a general description. He is then to take upon himself the critical functions of a conveyancing counsel, and to decide whether that instrument does or does not affect the property, and whether he is to report it. Now, I ask how many of the clerks daily employed in making searches in the Middlesex registry are really competent to the exercise of this function—or have made themselves sufficiently acquainted with the abstract to form any judgment at all? I believe, also, that the prevailing practice is to search only down to the termination of apparent ownership on the abstract, viz., down to the date of the next conveyance, whereas it is obvious that the search should be extended down to the date of the registration of that conveyance, as a subsequent conveyance previously registered would have the priority.

I venture to say, also, that in three abstracts out of five, it would require all the *sagacity* and the knowledge of the conveyancer to find out, under a complicated series of facts and transactions, who are the persons whose registered acts might affect the title, and that, therefore, in all such cases the search, as executed in the Middlesex registry, does not secure the safety of the purchaser, so far as is dependent on the registry.

Titles often depend upon facts, such as descents to numerous co-parceners, &c. which are briefly stated in the abstract, and on which the utmost vigilance of mind as well as much information is necessary to trace the devolution of undivided shares, and follow them through their owners for the time being, and that in such cases, unless the search were made by the conveyancer himself, and that while the analysis of the title is fresh in his recollection, it would be impossible to say that the search had exhausted the risks.

Now, as these circumstances would continue, notwithstanding any alteration in the mechanism of the register, we are compelled to say that the security afforded by a register is not universal.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.

### Common Law Courts.

[THE cases on the *Construction of Statutes* reported within the last three months were given in the last number, p. 333, *ante*. We

now continue the Digest with the next class of decisions, viz.]

## II. GROUNDS OF ACTION AND PRINCIPLES OF COMMON LAW.

### BANKING COMPANY.

A banking company was established in 1836, under a deed of settlement, which provided that the business of the company should be carried on at Douglas, in the Isle of Man, and such other places as should be determined on, pursuant to the clause thereafter contained for that purpose, viz. by the unanimous vote of the directors, convened in a particular manner. The defendant, who resided at Huddersfield, was an original shareholder in the bank, and continued so until its stopping payment in 1843. In 1839, a branch bank was opened at Castletown, and the business was carried on there, as well as at Douglas, till 1843: *Held*, that under the circumstances, the mere lapse of time was evidence against the defendant, either that the Castletown branch was regularly established pursuant to the requisites of the deed, or, that if it was not, he knew of and assented to its establishment otherwise, so as to make him liable to a depositor at that branch. *Crellin v. Brooke*, 14 M. & W. 11. See 1 Car. & K. 571.

Cases cited: *Hawken v. Bourne*, 8 M. & W. 703; *Dunford v. Tratlies*, 12 M. & W. 549; *Bowrie v. Freeth*, 9 B. & C. 632; 4 Man. & R. 512; *Dickinson v. Valpy*, 10 B. & C. 128; 5 Man. & R. 126; *Pitchford v. Davis*, 5 M. & W. 2.

### BARGAIN AND SALE.

*Goods not in possession.*—A grant of goods which are not in existence, or which do not belong to the grantor at the time of executing the deed, is void, unless the grantor ratify the grant by some act done by him with that view, after he has acquired the property therein. *Luna v. Thornton*, 1 C. B. 379.

Cases cited: *Grantham v. Hawley*, Hobart, 134; *Steel v. Brown*, 1 Taunt. 381; *Irons v. Smallpiece*, 2 B. & Ald. 551; *Bunn v. Markham*, 2 March, 532; *Smith v. Smith*, 3 Stra. 955; and see 2 Man. & Gr. 691 (a); *Atkinson v. Maling*, 2 T. R. 462; *Tapfield v. Hillman*, 6 Man. & Gr. 245; 6 Scott, N. R. 967; *Hadham's case*, 3 Inst. 197; and see 1 East, 167.

### BARTER.

Where two parties agree to barter goods for goods, and the balance being in favour of the plaintiff, the defendant omitted for nearly three years to send goods to meet it, upon which the plaintiff brought an action for goods sold and delivered: *Held*, that the lapse of time did not entitle the plaintiff to maintain such an action, but that his remedy was by action against the defendant for not delivering the goods pursuant to the contract between them. *Harrison v. Luke*, 14 M. & W. 139. See *Ingram v. Shirley*, 1 Stark. N. P. C. 185; *Garey v. Pyke*, 10 A. & E. 512; 2 Per. & D. 427.

### BILL OF EXCHANGE.

1. *Notice of dishonour.*—A., in London, to

whose care a bill, bearing the indorsement of *B.*, at Bruges, had been referred, "in case of need," paid it supra protest, for *B.*'s honour, and immediately gave *B.* notice, and sent the bill to him. *B.* indorsed the bill to *A.*, and returned it to him by the next post, and *A.* on the same day caused notice of the dishonour to be given to the drawer: *Held*, that the notice was in time. *Goodall v. Polhill*, 1 C. B. 233.

Cases cited: *Daly v. Slatter*, 4 C. & P. 200; *Mertens v. Winnington*, 1 Esp. N. P. C. 112; *Woodthorpe v. Lawes*, 2 M. & W. 109; *Alexander v. Burchfield*, 3 Scott, N. R. 555; *Firth v. Thrush*, 8 B. & C. 387; 2 Man. & Ry. 359; *Beveridge v. Burgis*, 3 Campb. 262.

2. *Notice of dishonour*.—A bill having been dishonoured, notice was given by the holder to the first indorsee, who in due time left at the residence of the drawer his own card and address, on the back of which was written, "Bill for 30*l.*, drawn by *S.* on *W.*, dishonoured, lies due as on other side." The bill was not lying there, but at the residence of the holder, who had other bill transactions with the drawer: *Held*, to be a sufficient notice of dishonour. *Rowlands v. Springett*, 14 M. & W. 7. See *Farze v. Sharwood*, 2 Q. B. 388; 2 Gale & D. 116.

3. *Presentment*.—Where a bill of exchange drawn by *W. C.* upon one *J. C.* was accepted by the latter, payable at the plaintiffs' bank, and the bill was subsequently indorsed by *W. C.* to the plaintiffs, and on the day when it became due there was no assets of *J. C.*'s in the bank. *Held*, in an action by the plaintiffs, as the indorsees against the indorser that it was not necessary to show a presentment of the bill to the acceptor.

*Notice of dishonour*.—It was proved at the trial by a clerk of the plaintiffs, notice to produce having been given, that on the day when the bill became due, he wrote a letter to the defendant informing him, that "*J. C.*'s acceptance due that day was unpaid, and requesting his immediate attention to it." *Held*, a sufficient notice of dishonour. *Bailey v. Porter*, 14 M. & W. 44.

Cases cited: *Grugoon v. Smith*, 6 Ad. & Ell. 499; 2 Nev. & P. 303; *Sanderson v. Judge* 2 H. Bl. 509; *Furse v. Sharwood*, 2 Q. B. 388; 2 Gale & D. 115; *Hartely v. Case*, 4 B. & Cr. 339; *Messenger v. Southey*, 1 M. & G. 70; 1 Scott, N. R. 180; *Strange v. Price*, 10 Ad. & Ell. 125; 2 Per. & D. 237; *Solarte v. Palmer*, 7 Bing. 530; 1 B. N. C. 194; *Phillips v. Gould*, 8 C. & P. 355; *Boulton v. Welch*, 3 Bing. N. C. 688; 4 Scott, 425.

#### CONSPIRACY (ACTION FOR).

In an action on the case for conspiracy to prevent the plaintiff, who was about to perform as an actor at a theatre, from acquiring fame and profit in that performance, and for hiring persons to hoot, hiss, groan, and yell at the plaintiff during the performance, and for hooting, hissing, &c. together with such persons, it was proved at the trial, that on an occasion when the plaintiff appeared as an actor, there

was a great disturbance in the theatre, consisting of hooting, &c., in which the defendants took a prominent part. The plaintiff rested entirely his case on the conspiracy. The judge left it to the jury to say, whether what took place was the result of a preconcerted arrangement between the defendant and persons in other parts of the theatre: *Held*, a proper direction.

The plaintiff had joined issue on the plea of not guilty, and two other pleas, and demurred to a fourth, upon which judgment was given for him. The venire was as well to try the issues as to assess the plaintiff damages on the issue in law. The jury found a general verdict for the defendants, upon all the issues of fact, no damages were assessed on the issue at law: *Held*, that the plaintiff was not entitled to a venire de novo. *Gregory v. Duke of Brunswick*, 6 M. & G. 953.

Cases cited: *Clifford v. Brandom*, 2 Campb. 358; *Skinner v. Gunton*, 1 Wms. Saund. 238 c.; *Saville v. Roberts*, 1 Ld. Raym. 279; *Carth. 417*; *Palk v. Duning*, 1 Roll. Abr. 111, pl. 5; *Muriel v. Tracy*, 6 Mod. 169; *Codrington v. Lloyd*, 8 A. & E. 449; 1 P. & D. 157; *Clement v. Lewis*, 3 Bro. & B. 297; 7 J. B. Moore, 200; *Cromer v. Shew*, 4 M. & W. 163; *Cheyne's case*, 10 Co. Rep. 118; *Clifford v. Brandon*, 2 Campb. 372 n.; 6 M. & G. 217; *Macklin's case*, Wentw. Prec. 448; *Ashby v. White*, 8 St. Tri. 89; 14 How. St. Tri. 695; 6 Mod. 45; 1 Salk. 19; 3 Salk. 17; *Ld. Holt, 524*; *Bro. P. C. i. 45*, (1 ed.); *i. 62*, (2 ed.); *Stockdale v. Hansard*, 9 A. & E. 1; 2 P. & D. 1; *Gould v. Oliver*, 2 M. & G. 208; 2 Scott, N. R. 241; *Holford's and Platt's case*, 2 Roll. Rep. 22; *Zouch and Bamfield's case*, 1 Leon. 80; *Barton's case*, 5 Co. Rep. 69; *Hob. 164*, 233; *Heard v. Baskerville*, *Hutton*, 15; *Rex v. Bishop of Chester*, 2 Salk. 561; 3 Burr. 1509.

#### CONTRACT.

In assumpsit by *A.* against *B.*, the declaration set out an agreement under which *B.* was to be let into possession of a public house, and to purchase certain fittings, &c., for 65*l.*, 4*l.* thereof to be paid immediately, and the residue on the 30th of July, on which day *B.* was to be let into possession; and if either party made default or failed to fulfil the agreement, he was to forfeit 30*l.* to the other on demand. Averment, that *A.* was always ready and willing, and offered to give possession, and to sell and deliver the fittings, &c. Breach, that, although *B.* paid the 4*l.*, yet he did not pay the plaintiff the 61*l.*, or any part thereof, or pay the plaintiff the 30*l.*, or any part thereof. *Held*, on special demurrer, assigning for cause that there had been no demand of the 30*l.*, that the breach was sufficient, notwithstanding the reference to the clause of forfeiture by the introduction of the words negating the payment of the 30*l.* *Maylam v. Norris*, 1 C. B. 244.

Cases cited: *Birks v. Trippet*, 1 Wms. Saund. 6th ed., 33 b, n. (2); *Bach v. Owen*, 5 T. R. 409; *Rushton v. Aspinall*, 2 Dougl. 679; *Wallis v. Scott*, 1 Stra. 88; *Carter v. Ring*, 3 Bamp. 459; and see *Osbourne v. Homer*, 6 Mod. 167; *Lord Holt*, 191; *Nicholl v.*

Bromley, 2 Brod. & Ring. 464; 5 J. B. Moore, 307; Simpson v. Routh, 2 B. & C. 682; 4 Dowl. & Ry. 181; Winter v. Trimmer, 1 W. Bls. 395; Harrison v. Wright, 13 East, 543; Cases in Chancery, 294.

## COPYHOLD.

See *Mining rights*.

## COVENANT.

1. *Running with the land*.—*A.* being tenant for life, with a leasing power, by indenture of lease bearing date in March, 1805, demised to *B.* for 99 years, if three persons therein named should so long live. This indenture contained the following clause:—"And *A.*, for himself, his heirs and assigns, the demised premises unto *B.*, his executors, administrators and assigns, under the rent, covenants, conditions, exceptions and agreements, before expressed, against all persons whatsoever lawfully claiming the same, shall and will during the said term warrant and defend." This lease having, upon the death of *A.*, been held to be void as against the remainder-man by the judgment of a court of law, on the ground that it was not made in due conformity with the leasing power; *Held*, that the clause in question operated as an express covenant for quiet enjoyment during the whole term granted by the lease, and consequently that *B.* or his assignee, and the executors, &c., of such assignee, might recover against the executors of *A.* the value of the term, the costs of defending an action of ejectment brought by the remainder-man, and also the sum recovered by him for mesne profits. *Williams v. Burrell*, 1 C. B. 402.

Cases cited: *Pinecombe v. Rudge*, Hob. 8; *Yelr.* 139; 1 Roll. 25; *Noy*, 131; *Wotton v. Hele*, 2 Saund. 177; 1 Lev. 301; 1 Sid. 466; 2 Keb. 684; *Swan v. Stramshaw*, Dyer, 257, a; 1 Anderson, 19; *Sir F. Moore*, 74; and see 5 M. & G. 30; *Wright d. Plowden v. Cartwright*, 1 Burr. 283; *Evans v. Vaughan*, 4 B. & C. 261; 6 D. & R. 349; *Lady Cavan. v. Paltey*, 2 Ves. jun. 544; *Hyde v. Skinner*, 2 P. Wms. 197; *Spencer's case*, 5 Co. Rep. 17, a; *Waller v. The Dean and Chapter of Norwich*, Owen, 136; S. C. 1 Brownlow and Goldab. 21; *Kingdon v. Nottle*, 4 M. & Sel. 53; *Adams v. Gilhey*, 6 Bing. 656; 4 M. & P. 491; *Hyde v. The Dean and Canons of Windsor*, Cro. Eliz. 552; *Bragg v. Wiseman*, 1 Brownlow & Goldab. 42; *Andrew v. Pearce*, 1 New. Rep. 158; *Holder v. Taylor*, Hob. 12; *Fraser v. Skev*, 2 Chitt. Rep. 646; *Iggulden v. May*, 9 Ves. 325; *Burnett v. Lynch*, 5 B. & C. 589; 8 D. & R. 368; *Quick v. Ludburrow*, 3 Bulstr. 29; *Gordon v. Calvert*, 2 Sim. 253; 4 Russ. 581; Co. Litt. 209, a; *Wollaston v. Hakewill*, 3 Man. & Gr. 297; 3 Scott, N. R. 593.

2. *Joint and several*.—By an indenture between *A.* and *B.* of the first part, *C.* of the second part, the several persons whose names and seals were thereto affixed as shareholders of a certain company then about to be formed, of the third part, and certain other persons of the fourth part, reciting that *A.* and *B.* were possessed of a certain colliery for the residue of a term of 42 years, with full powers of working,

&c., and had proposed to divide the colliery and works into eighteen shares of 4000*l.* each, and that they agreed to sell, and the several persons parties thereto of the third part had agreed respectively to purchase so many of the shares respectively as were set opposite their respective names, amounting altogether to fifteen shares therein, at the said price, the other three eighteenth shares being retained by *A.* and *B.*, and that each of the parties thereto of the third part had paid 1000*l.* for each share: each of them, *A.* and *B.*, severally covenanted with each of the parties thereto of the third part, their executors, &c., (*inter alia*), that they would produce and show a good title to the term, that they would effectually assign the same, and that they would, within a certain time, complete certain specified works. *Held*, that the covenant by *A.* and *B.* was a several covenant with each of the parties to the indenture of the third part, each covenantee having such a separate interest in the subject matter of the covenant as to enable him to sue alone upon the covenant. *Miller v. Ladbroke*, 7 M. & G. 219.

Cases cited: *Slingsby's case*, 5 Co. Rep. 126; *Eccleston v. Chigbam*, 4 Nev. & M. 222; 1 Saund. 153; 2 Keble, 338-9, 347, 385, 8. 6; *Owston v. Ogle*, 5 Mann. & Ry. 308, 384; 13 East, 538; *Servante v. James*, 10 B. & C. 410; 5 Man. & Ry. 299; *James v. Emery*, 8 Taunt. 245; 2 Marsh. 195; 5 Price, 533; *Scoble v. Park*, 12 M. & W. 146.

## CUSTOM.

See *Mining rights*.

## CUSTOM DUTIES.

See *Tithes*.

## DEED.

*Construction*.—*A.* deed of assignment by *A.* of all his personal estate and effects whatsoever to trustees for the benefit of creditors, passed a deed of assignment of leasehold premises made to *A.* by way of mortgage, with power of sale.

*Erasures*.—*A.* executed to *B.* and *C.* a deed of trust for the benefit of creditors, purporting to be made between him on the first part, *B.* and *C.* of the second part, and the several other persons whose names, and the amount of whose debts were set out in a schedule thereunto annexed, being creditors of *A.*, of the third part. At the time of its execution by *A.*, there was no schedule annexed; when it was produced in evidence, (in an action of trover by *A.* against *B.* and *C.* for a mortgage deed alleged to have passed under it,) it had a schedule annexed, consisting of the signatures of certain of his creditors, some of which had been erased; and others had no sums set against them. *Held*, that the deed was not avoided thereby. *West v. Steward*, 14 M. & W. 47. See *Ringer v. Cunn*, 3 M. & W. 343; *Weeks v. Maillardet*, 14 East, 668; *Hudson v. Revett*, 5 Bing. 369; 2 M. & P. 663.

## DEVASTATION.

See *Executors*.

DEVISE.

**Restraint on alienation.**—*A.* devised his copyhold and real estates to *B.*, his heirs and assigns; but "in case *B.* shall depart this life without leaving any issue of his body, lawfully begotten, then living, or being no such issue, and *B.* shall not have disposed and parted with his interest of, in, and to the said copyhold estate," then he devised the same unto and to the use of *C.* her heirs, and assigns. *Held*, that the limitation over to *C.* was valid, and took effect on the death of *B.* without issue, and without having parted with his interest by surrender or by deed in his lifetime, and that a testamentary disposition by *A.* was inoperative. *Doe d. Stevenson v. Glover*, 1 C. B. 448.

EVIDENCE.

See *Banking Company; Libel; Sheriff; Ship.*

[The cases turning solely or mainly on questions of evidence will be classed separately in a subsequent number; but the decisions here referred to are of a mixed kind, and have been placed in this section to which they principally relate.]

EXECUTORS.

**Devastavit.**—In assumpsit by *A.* against *B.*, *C.* and *D.*, as executrix and executors of *E.*, for a debt due from *E.*, *C.* and *D.* severally pleaded *plene administravit*; except as to 383*l.* 7*d.*, and also except as to certain goods of the value of 48*l.* 13*s.* 6*d.* *A.* signed judgment for 1280*l.* 13*s.* to be levied; as to 865*l.* 0*s.* 1*d.* of the assets confessed, and as to the residue, of assets in *fuero*. Under a *f. fa.* the goods produced 400*l.* 9*s.* 5*d.* *B.* gave a cheque on the bankers with whom the 383*l.* 6*s.* 7*d.* had been deposited, which was dishonoured, not being signed by *C.* and *D.*

*Held*, that *B.* was bound by her admission that the money was in her hands, and consequently was guilty of a *devastavit* to the amount of 383*l.* 6*s.* 7*d.*

*Scilla*, that *B.* was liable for no more than 400*l.* 9*s.* 5*d.* in respect of the goods. *Cooper v. Taylor*, 5 M. & G. 989.

Cases cited: *Grant v. Taylor*, 6 M. & G. 886; *Wheatley v. Lane*, 1 Wms. Saund. 2196, n.; *Erring v. Peters*, 3 T. R. 685; *Leonard v. Simpson*, 2 New. Ca. 176; 2 Scott, 353; *Palmer v. Waller*, 1 M. & W. 689; 5 Dowl. P. C. 315; *Rock v. Leighton*, 1 Selw. 310; 1 Ld. Raym. 590; 1 Com. Rep. 87; *Erving v. Peters*, 3 T. R. 686; *Skelton v. Hawling*, 1 Wils. 258. *Blackmer v. Mercer*, 2 Wms. Saund. 402, n.; *Leonard v. Simpson*, 2 N. Ca. 176; 2 Scott, 353.

GUARANTEE.

**Consideration.**—*B.* gave to *A.* the following guarantee:—"As you are about to enter upon transactions in business with *C.*, with whom you have already had dealings, in the course of which *C.* may from time to time become largely indebted to you; in consideration of your doing so, I hereby agree to be responsible to you for

and guarantee to you the payment of any sums of money which *C.* now is, or may at any time be indebted to you, so that I am not called upon to pay more than the sum of 2,000*l.*" There had been considerable dealings between *A.* and *C.* prior to the date of the guarantee, consisting of loans of money, payments made for, and goods supplied to *C.* by *A.*, the credit upon which had not then expired, and those dealings had been to a small extent since continued. *Held*, that the guarantee disclosed a sufficient consideration for the payment as well of the past as of the future debt.

The declaration alleged the existence of prior dealings between *A.* and *C.* of the three descriptions above mentioned, and then went on to state, that, in consideration that *A.* would continue such dealings as aforesaid with *C.*, *B.* promised *A.* to be responsible for, and to guarantee the payment of any sums of money which *C.* then was, or at any time thereafter might be indebted to *A.* in the course of such dealings as aforesaid, that is to say, as well in respect of the said sums of money so lent and advanced on credit as aforesaid, and of the said sums of money so paid, laid out and expended on credit as aforesaid, and of the said goods so sold on credit as aforesaid, and which respective credits were wholly unexpired as aforesaid at the time of the making of the said promise, as also in respect of such dealings so, to be continued as aforesaid, so that *C.* should not be called on to pay more than 2,000*l.* *Held*, that there was no variance between the declaration and the proofs; and that the declaration was good. *Johnston v. Nicholls*, 1 C. B. 251.

Cases cited: *Wood v. Benson*, 2 Cr. & J. 94; *Raikes v. Todd*, 1 P. & D. 138; 6 Ad. & Ellis, 646; *Russell v. Mosely*, 3 Brod. & Bimp. 211; 6 J. B. Moore, 521; *Kennaway v. Trevelyan*, 5 M. & W. 498; *Wain v. Walters*, 5 East, 10; 1 J. P. Smith, 299; *Saunders v. Wakefield*, 4 B. & Ald. 595; *Sturt v. Lill*, 9 East, 348; *Jarvis v. Wilkins*, 7 M. & W. 410; *Newberry v. Armstrong*, 6 Bing. 201; 3 M. & P. 509; *Hawes v. Armstrong*, 1 New Cases, 761; 1 Scott, 661; *James v. Williams*, 5 B. & Ad. 1109.

INSURANCE.

**Concealment.**—Assumpsit on a policy of assurance on life, one of the terms of which was, that it should be void, if any thing stated by the assured, in a declaration or statement given by him to the directors of the insurance company before the execution of the policy, should be untrue. In this declaration the assured stated that "he was at that time in good health, and not afflicted with any disorder, nor addicted to any habit tending to shorten life; that he had not at any time been afflicted with insanity, rupture, gout, fits, apoplexy, palsy, dropsy, dysentery, scrofula, or any affection of the liver; that he had not had any spitting of blood, consumptive symptoms, asthma, cough, or other affection of the lungs; and that one *T. W.* was at that time his usual medical attendant." The declaration in the cause averred the truth of this declaration and statement of the assured.



The defendant pleaded pleas, respectively alleging, (1 to 5,) that the said declaration and statement of the assured was untrue in this—that at the time of making it he had had spitting of blood, consumptive symptoms, an affection of the lungs, an affection of the liver, and a cough of an inflammatory and dangerous nature; 6thly, that at that time he was afflicted with a disorder tending to shorten life; 7thly, that he was not at that time in good health; and 8thly, that he had falsely averred therein that *T. W.* was his usual medical attendant. Issues were joined on these pleas. *Held*, that the plaintiff was entitled to begin at the trial, the issue on the seventh plea (and *semble*, on the other pleas also) being upon him.

The defendant proved at the trial, that about four years before the policy was effected, the assured had spit blood, and had subsequently exhibited other symptoms usual in consumptive subjects; and that he died of consumption three years after the date of the policy. The judge, in summing up, read over the several issues to the jury, and in the course of it, stated to them, that it was for them to say whether, at the time of his making the statement set forth in the declaration, the assured had had such a spitting of blood, and such affection of the lungs and inflammatory cough, as would have a tendency to shorten life. *Held*, that this was a mis-direction; for that, although the mere fact of the assured having spit blood would not vitiate the policy, the assured was bound to have stated that fact to the insurance company, in order that they might make inquiry whether it was the result of the disease called spitting of blood. *Geach v. Ingall*, 14 M. & W. 95. See *Carter v. James*, 1 M. & R. 281, 6 C. & P. 64; *Huckman v. Fernie*, 3 M. & W. 805; *Rawlins v. Desborough*, 8 C. & P. 325.

And see *Ship*, 3.

#### LANDLORD AND TENANT.

*Yearly rent*.—By a memorandum in writing, *A.* agreed to let to *B.* a house "at a yearly rent of 50*l.*," with a proviso that *A.* should, "in consideration of the yearly rent as aforesaid being duly paid," give *B.* quiet possession of the said house; and *B.* agreed to "pay the aforesaid rent of 50*l.*, and all taxes," &c. The memorandum then concluded thus:—"Likewise the stable and loft over, now occupied by *H.* at a further rent of 25*l.* per annum, to be paid on the usual quarter days." *Held*, by *Coltman, Cresswell* and *Erle, J. J.*, *Absentee Tindal, C. J.*, that the reservation of quarterly payments applied only to the 25*l.* rent, and not to the 50*l.* *Coomber v. Howard*, 1 C. B. 440.

*2. Tenancy from year to year*.—Defendant being tenant from year to year at a given rent, the rent was raised at the termination of one of the years, by consent of landlord and tenant.

*Held*, that, if this created a new contract, it must be a contract to hold on the old terms; and that a contract for a tenancy for two years certain from the time of raising the rent could not be inferred (in default of additional evi-

dence), even on the assumption that an original contract for a tenancy from year to year creates a tenancy for two years certain. *Doe d. Mosck v. Geekie*, 5 Q. B. 841.

Cases cited: *Dod d. Bedford v. Kendrick*, M. S.; *Stead v. Dawber*, 10 A. & E. 57; *Marshall v. Lynn*, 6 M. & W. 109; *Cuff v. Penn*, 1 M. & S. 21; *Doe d. Chadborn v. Green*, 9 A. & E. 658; 9 A. & E. 661, note (d); *Doe d. Clark v. Smaridge*, Q. B. Trin. Vac. 1845.

*3. Notice to quit*.—A notice to quit a house held by the plaintiff as tenant from year to year, was given to him on the 17th June, 1840, which required him to quit the premises "on the 11th October now next ensuing, or such other day and time as his said tenancy might expire on." The tenancy had commenced on the 11th October in a former year. *Held*, that this was not a good notice for the year ending on the 11th October, 1841. *Mills v. Goff*, 14 M. & W. 72. See *Doe d. Duke of Bedford v. Kightley*, 7 T. R. 63; *Doe d. Lord Huntingtower v. Culliford*, 4 D. & R. 248; *Leech v. Bailey*, 6 Price, 504.

#### LEASE.

*Stamp*.—Where a piece of land was demised for ninety-nine years, at an annual rent of 8*l.*, and the lease contained a covenant that the lessee should, within a year from the granting of the lease, build a dwelling-house on the land, and expend the sum of 150*l.*, at the least, upon it: *Held*, that a stamp of 1*l.* was sufficient. *Nicholls v. Cross*, 14 M. & W. 42.

And see *Covenant*, 1; *Money had and received*, 3.

#### LEGACY.

*Wages*.—Where a party entitled to a legacy under a will, has a claim against the testator, which he conceals from the executor until after he has received the legacy, he cannot afterwards, in an action against the executor, object that the amount of the legacy was not paid in a due course of administration. *Stroud v. Stroud*, 7 M. & G. 417.

Cases cited: *Richards v. Browne*, 3 N. Ca. 493; 4 Scott, 262; *Richardson v. Greece*, 3 Atk. 65; *Hinchcliffe v. Hinchcliffe*, 3 Ves. jun. 529.

#### LIBEL.

*Mis-direction*.—In an action for a libel, in the form of an advertisement, charging the plaintiff with fraud, and offering a reward for his apprehension, evidence having been given, with the consent of the defendant's counsel, of arrests of the plaintiff in consequence of the advertisement, after the commencement of the action, it was held, that the defendant could not afterwards complain that the judge, in his summing up, did not expressly tell the jury that they were not to take those arrests into their consideration in estimating the damages for the libel. *Goslin v. Corry*, 7 M. & G. 342. See *Hamilton v. Frere*, 2 Wms., Saund. 171 b.

#### MALICIOUS PROSECUTION.

*Mis-direction*.—On the trial of an action for maliciously indicting the plaintiff for an assault,

the facts proved were as follow:—The defendant came to the house of the plaintiff (which was let out in sets of chambers) to inquire for a person who, he said, lived there, but being informed that no such person lived there, used abusive language, and, on being required by the plaintiff to go away, laid hands on him, upon which the plaintiff forced him out. There was contradictory evidence as to the degree of force used by the plaintiff in doing so. The defendant indicted the plaintiff for an assault; the bill was found, and the indictment tried, and the plaintiff was acquitted. On the trial of the action, the learned judge directed the jury, that if the defendant preferred the indictment with a consciousness that he was in the wrong in the transaction, there was no reasonable or probable cause for the indictment. *Held*, that this direction was substantially correct. *Hinton v. Heather*, 14 M. & W. 131. See *Fish v. Scott*, Peake, 135; *Sutton v. Johnstone*, 1 T. R. 493; *Blackford v. Dod*, 2 B. & Ad. 179.

#### MASTER AND SERVANT.

*Hiring*.—The rule, that an indefinite hiring is a hiring for a year, is not an inflexible rule of law; it must be considered in connection with the circumstances of the particular case.

A. was engaged as editor of a new periodical publication by B., at a salary to be paid weekly.

The publication was abandoned by B. soon after its commencement. In an action by A. against B. for dismissing him before the termination of a year, a usage was proved that such a hiring was annual, with regard to established periodicals. *Held*, that the jury were properly directed to consider whether such usage was applicable to a newly started publication.

When the defendant has a verdict upon two issues, each of which goes to the whole cause of action, and the verdict upon one of those issues is unsatisfactory, *quære*, whether a new trial will be granted, and thereby the defendant's verdict upon the other issue, avoided. *Baxter v. Nurse*, 6 M. & G. 935.

Cases cited: *Seelling v. Huntingfield*, 1 C. M. & R. 20; *Newton v. Albett*, 5 Tyrwh. 709; 2 C. M. & R. 54; 1 Gale, Exch. 72; *Fawcett v. Cash*, 5 B. & Ad. 904; 3 N. & M. 177; *Beeston v. Collyer*, 4 Bing. 309; 12 J. B. Moore, 558; *Rex v. Seacroft*, 2 M. & S. 421; *Rex v. Inhabitants of Lyth*, 5 T. R. 327.

#### MINING RIGHTS.

To a declaration in case for digging mines near the foundations of plaintiff's dwelling-house, without leaving due support, so that the foundations were injured, and the dwelling-house sank in and was in danger of falling, defendant pleaded, that the dwelling-house, from time whereof, &c., was part of the manor of N., and was situate in a township within the said manor; that the Queen was seised in fee of the manor, and of the mines, collieries and seams of coal therein; and that she, and all whose estate she had, &c., and their tenants, and those to whom she or they have granted license to mine, from time whereof, &c., have

been used, &c., and of right ought, &c., to work the said mines, collieries, &c., under any messuages, dwelling-houses, buildings and lands, parcel of the manor, and within the township, and, for the purpose of working the said mines, collieries, &c., to dig and make under ground all such mines, pits, &c., under the said messuages, dwelling-houses, buildings and lands, or any part thereof, as might from time to time be expedient and necessary for that purpose, and out of the said mines, &c., to get coals, &c., and carry away and convert the same, doing no more than necessary for the purpose aforesaid, and paying to the tenants and occupiers of the surface of lands damaged thereby a reasonable compensation, when demanded, for the use of the surface, or any damage occasioned thereto in and about the working of the mines, collieries, &c., but without making compensation in respect of the surface on any other account, and without making compensation for any damage occasioned to any messuages, dwelling-houses or other buildings, within and part or parcel of the manor by or for the purpose of working the said mines, collieries, &c. Justification, stating that defendant, as lessee and grantee of the Crown, committed the alleged grievances, &c., in exercise of the above right, doing no more than was necessary for the purposes aforesaid. *Held*, that the prescription was void, as being unreasonable.

That a custom, similarly pleaded, was void on the same ground.

That the right, if maintainable in itself, might have been pleaded in virtue either of prescription or of custom.

And that it might have been claimed as well against copyholders as against tenants of customary freehold. *Hilton v. Earl Granville*, 5 Q. B. 701.

Cases cited: *E. of Falmouth v. Thomas* 3 Tyrwh. 26; S. C. 1 Cro. & M. 89; *Follet v. Troake*, 2 Ld. Ray. 1186; *Partridge v. Scott*, 3 M. & W. 220; see *Acton v. Blundell* 12 M. & W. 324, 352; *Wynt v. Harrison*, 3 B. & Ad. 871; *Dodd v. Holme*, 1 A. & E. 493; *Harris v. Ryding*, 5 M. & W. 60; *Lord Pelham v. Pickersgill*, 1 T. R. 660, see p. 667; *Bourne v. Taylor*, 10 East, 189; *Paddock v. Forrester*, 3 Mann. & G. 903; *E. of Cardigan v. Armitage*, 2 B. & C. 197; *Tyson v. Smith*, 9 A. & E. 406, (in Exch. Ch.) affirming the judgment in *Q. B.*, S. C.; 6 A. & E. 745; *Bateson v. Green*, 5 T. R. 411; *Clarkson v. Woodhouse*, 5 T. R. 412, S. C. 3 Doug. 189; *Folkard v. Hemmett*, 5 T. R. 417; *Place v. Jackson*, 4 Dowd. & R. 318; *Broadbent v. Wilkes*, Wilkes, 360; see *Clayton v. Corby*, A. & E. 415; *Arlett v. Ellis*, 7 B. & C. 346; *D. dem. Earl of Falmouth v. Alderson*, 1 M. & W. 210, S. C.; *Tyrwh. & Gr. 543*; *Rogers v. Brenton*, argued in *Q. B.* 23rd Jan. 1845; *Hix v. Gardiner*, 3 Bulst. 195; *Tyson v. Smith*, 9 A. & E. 422; *Mill v. Benet*, Year B. Trin. 2 H. 4, 24 B. pl. 20; *Doe d. Grubb v. Earl of Burlington*, 5 B. & Ad. 507, 510; *Bishop of London v. Mercers' Company*, 2 Stra. 925, 931; *Fletcher v. Pogson*, 3 B. & C. 192; *Tyson v. Smith*, 9 A. & E. 421; *Broadbent v. Wilkes*, Wilkes, 360; *Bad-*

ger v. Ford, 3 B. & Ald. 153; Arlett v. Ellis, 7 B. & C. 365; Badger v. Ford, 7 B. & C. 346; Harris v. Ryding, 5 M. & W. 60; Flight v. Thomas, 10 A. & E. 590; Potter v. North, 1 Vent. 383, S. C. 1 Saund. 350; Dewell v. Sanders, Cro. Jac. 490; Fowler v. Sanders, Cro. Jac. 446; Wyrley Can. Co. v. Bradley, 7 East, 368; Earl of Lonsdale v. Littledale, 3 H. Bl. 267, 299; Lord Pelham v. Pickersgill, 1 T. R. 660; Bourne v. Taylor, 10 East, 189; Paddock v. Forrester, 3 Man. & G. 903; Earl of Cardigan v. Armitage, 2 B. & C. 197; Bateson v. Green, 5 T. R. 411; Arlett v. Ellis, 7 B. & C. 365, 373; Hilton v. Earl of Granville, 1 Cr. & P. 283; Clarkson v. Woodhouse, 5 T. R. 412; Folkard v. Hemmatt, 5 T. R. 417; Place v. Jackson, 4 Dowl. & R. 318; Harris v. Ryding, 5 M. & W. 60; Hinchcliffe v. Earl of Kinnoul, 5 New. Ca. 1; Earl of Cardigan v. Armitage, 2 B. & C. 197; Harris v. Ryding, 5 M. & W. 60; Flight v. Thomas, 10 A. & E. 590; Partridge v. Scott, 3 M. & W. 220; Hilton v. Earl of Granville, 1 Craig & P. 283, 292; Broadbent v. Wilkes, Willes, 360; Wilkes v. Broadbent, 1 Wils. 63, S. C.; 2 Str. 1224; White v. Sayer, Palm. 211; Paddock v. Forrester, 3 M. & G. 903; Arlett v. Ellis, 7 B. & C. 346; Folkard v. Hemmatt, 5 T. R. 417.

#### MISDIRECTION.

See *Insurance; Libel; Malicious Prosecution.*

#### MONEY HAD AND RECEIVED.

1. *Surplus.*—D. was appointed by deed by the plaintiff, the mortgagor of an estate, and P. the mortgagee, to receive the rents of the estate; and by the terms of the deed he was, after allowing for taxes and repairs, to hold all the remaining rents in trust for the purposes therein specified, viz.:—1st, to pay taxes; 2ndly, the costs of collection; 3rdly, a commission; 4thly, premiums in a policy of insurance; and lastly, to apply the surplus in or towards satisfaction, on the 6th January and 6th July in each year, of the accruing interest on the principal money secured, and to pay the *ultimate surplus*, if any, to the plaintiff; with a proviso, that if, on the 6th January or 6th July, he should have rents and profits in hand, it should be lawful for him to retain the whole or part for the purpose of paying the premiums in that year on the policy of insurance. D. did not execute the deed. *Held*, that D. was not bound by the terms of this deed to pay the surplus *existing on each* 6th January and 6th July to the plaintiff, and therefore that, although he had a balance in his hands on either of those days, after payment of the half-yearly interest, he was not liable (the trust still remaining) to be sued by the plaintiff for money had and received. *Bartlett v. Dimond*, 14 M. & W. 49.

Cases cited: Roper v. Holland, 3 Ad. & E. 899; 4 Nev. & M. 668; Case v. Roberts, Holt, 500; Edwards v. Bate, 13 Law J. (N. S.) C. P. 156; Sorbie v. Park, 12 M. & W. 146; Servante v. James, 10 B. & C. 410; 5 M. & Ry. 299; Harvey v. Archbold, 3 B. & C. 626; 5 D. & R. 500; Powell v. Rees, 7 A. & E. 426; 3 Nev. & P. 371; Gilbert v. Dyneley, 3 M. &

G. 12; 3 Scott, N. R. 364; Ramon v. Hayward, 2 A. & E. 666; Pardoe v. Price, 13 M. & W. 282; Allen v. Impett, 8 Taunt. 263.

2. *Sale.*—Certain shares in a joint stock company were deposited by B. with A., to be sold by A. for B.'s accommodation. B. having failed to provide for the bills, A. sold the shares, and gave notice of that fact to B., who refused to execute a transfer to the purchaser. In an action for money had and received, brought by A. to recover the amount paid by him to take up one of the bills, B. pleaded in bar the deposit and sale of the shares. Upon an issue taken on this plea: *Held*, that B. was entitled to the verdict, notwithstanding his refusal to give effect to the sale, by executing a transfer. *Ross v. Moses*, 1 C. B. 227.

3. *When action not maintainable.*—The plaintiff and defendant respectively were under-lessees, at distinct rents, of separate portions of premises, the whole of which were held under one original lease, at an entire rent. The plaintiff having paid the whole rent under a threat of distress, brought an action against the defendant to recover the proportion of rent due from him, as for money paid to his use: *Held*, that the action was not maintainable. *Hunter v. Hunt*, 1 C. B. 300.

Cases cited: Cowell v. Edwards, 2 R. & P. 258; Harbert's case, 3 Co. Rep. 13; Schlenker v. Moxy, 3 B. & C. 789; 5 D. & R. 747; Spencer v. Parry, 4 N. & M. 770; 3 Ad. & E. 331; 5 Man. & Gr. 759; Scott v. Stephenson, 1 Lev. 71.

#### PARTNER.

See *Ship, 2, 4; Banking Company; Co-tenant, 2.*

#### PATENT.

*Specification.*—Letters patent were obtained for improvements in the manufacture of a certain article. The specification described a *single* improvement in the mode of manufacturing that article: *Held*, that this was not an inconsistency invalidating the patent. *Nichol v. Haslam*, 7 M. & G. 378.

Cases cited: Morgan v. Seaward, 9 M. & W. 544; Gladstones v. Earl of Sandwich, 7 M. & G. 995, 1030, (b.); Cooke v. Pearce, 13 Law Jour. N. S. 189.

#### PRESCRIPTION.

See *Mining Rights.*

#### REWARD.

*Discovery of an offender.*—The defendants, by public advertisement, offered a reward of 20*l.* to any person who would give such information as would lead to the apprehension and conviction of the party or parties who had broken into, robbed, and set fire to their premises. One B. whom the plaintiff had taken into custody on suspicion of being concerned in the offence, offered to make certain disclosures if furnished with something to eat and drink. The plaintiff communicated this offer to a sub-inspector of police, who took B. to a public house, and gave him refreshment, whereupon B. made a voluntary confession, which resulted in his

conviction and transportation for the crime in question: *Held*, that the plaintiff was entitled to the reward. *Smith v. Moore*, 1 C. B. 438.

Cases cited: *Lancaster v. Walsh*, 4 M. & W. 16; *Williams v. Curwardine*, 4 B. & Ad. 631; 1 N. & M. 418; *Dutton v. Poole*, 2 Lev. 210; *Week v. Tibolt*, 1 Rolt. Abr. fo. 6, pl. 31.

#### SALE.

*See Money had and received*, 2.

#### SET-OFF.

*Accountant*: by the assignees of A., a bankrupt, for money had and received by the defendant to the use of the plaintiffs, as assignees.

Plea, that before the commencement of the suit, and before the defendant had notice of any act of bankruptcy committed by A., and before any fiat against him, the defendant gave credit to A. in the sum of 148*l.* 10*s.*, by accepting, for his accommodation, and at his request and without any consideration, a bill of exchange for that sum, which bill A. afterwards and before notice to the defendant of A.'s bankruptcy, indorsed, and negotiated for value for his own use and benefit; that the credit so given by the defendant by A. was a credit of a nature extremely likely to end in a debt from the said A. to the defendant; that afterwards and before the commencement of the suit, the defendant was obliged to pay the bill to the holder, and thereupon and thereby the said A. became and was indebted to the defendant in the sum of 148*l.* 10*s.*; that before the defendant had notice of any act of bankruptcy committed by A., and before any fiat against him, A. delivered to the defendant bills of exchange for 100*l.* and 20*l.*, for the purpose and in order that the defendant might receive the amounts thereof for the use of A.; that the defendant afterwards received such amounts, and was ready and willing to set off the one debt against the other: *Held*, that the acceptance of the bill for the accommodation of A. was a credit given by A., and that the delivery of the two bills by A. to the defendant for the purpose in the plea mentioned, was a credit given by A. to the defendant.

*Held*, also, that such mutual credits resulted in debts, which might be set-off against each other, under the 6 Geo. 4, c. 16, s. 50.

*Held*, also, that the defendant's set-off was well pleaded in confession and avoidance. *Bissett v. Bissett*, 1 C. B. 389.

Cases cited: *Hulme v. Muggleston*, 3 M. & W. 30; 6 Dowl. P. C. 112; *Young v. The Bank of Bengal*, 1 Moore, P. C. 150; 1 Des. 622; *Wood v. Smith*, 4 M. & W. 522; 7 Dowl. P. C. 249; *Groom v. Mealey*, 3 New Cases, 158; 1 Scott, 171; *Russell v. Bell*, 8 M. & W. 227; *Partridge v. Pennell*, 3 M. & Rob. 519; *Lowin v. St. Quintin*, 11 M. & W. 277; 2 Dowl. N. S. 790; *Lazarus v. Cowie*, 3 Q. B. 459; 2 Gale & L. 487; *Smith v. Hodson*, 4 T. R. 211; *Ex parte Boyle*, Cook's B. L. 361; *Ex parte Wagstaff*, 13 Ves. 65; *Kinder v. Butterworth*, 6 B. & C. 42; 9 D. & R. 47; *Southwood v. Taylor*, 1 B. & Ald. 477.

#### SHERIFF.

*Misrepresentation*.—A sheriff declared in case, for that, defendants being attorneys of P., who had sued out a *ca. sa.* against John Wright, and the sheriff having in custody (under another *ca. sa.*) another John Wright who was entitled to his discharge, defendants, well knowing the premises, falsely represented to the sheriff that the last mentioned J. W. was the J. W. against whom P.'s writ had issued; by means whereof defendants caused the sheriff to detain the J. W. who was in his custody, for which the last mentioned J. W. sued the sheriff, and he paid money by way of compromise.

The attorneys pleading not guilty; evidence was given for the sheriff, that his officer delivered a note to the defendants' managing clerk in P.'s action, describing the John Wright who was in custody, and inquired if that was the John Wright whom they had sued on behalf of P.; and that the clerk took the letter into the office where defendants were, and afterwards returned and told the officer that that was the John Wright, neither defendants nor the clerk at the time knowing to the contrary.

*Held*, by the Court of Queen's Bench that, on this evidence, the jury were warranted in finding for the sheriff; an action being maintainable for the misrepresentation, and the defendants being liable, under the circumstances, for the mis-statement of their clerk. Also, that the action lay, though the detainer was made, and the money for compromise paid, by the sheriff's officer, and not by himself.

But held by the Court of Exchequer Chamber, that a plea alleging that defendants had good and proper reason to believe, and did with good faith believe, the representation to be true, was an answer to the action.

The Court of Queen's Bench having given judgment for plaintiffs *non obstante verdicto* on this plea,

Judgment reversed.

*Evans v. Collins*, 5 Q. B. 804.

Cases cited: *Lamb v. Vice*, 6 M. & W. 467; *Humphrys v. Pratt*, 5 Bligh, N. S. 154; *Sargent v. Ilbery*, 10 M. & W. 1; *Wylie v. Birch*, 4 Q. B. 566; *Moens v. Hayworth*, 10 M. & W. 147; *Corbett v. Browne*, 8 Bing. 33; *Paasley v. Freeman*, 3 T. R. 51; *Baily v. Merrell*, 3 Bult. 94; *Tapp v. Lee*, 3 B. & P. 367; *Foster v. Charles*, 6 Bing. 396; 7 Bing. 105; 7 Bing. 107; *Polhill v. Walter*, 3 B. & Ad. 114; *Freeman v. Baker*, 5 B. & Ad. 797; *Adams v. Jarvis*, 4 Bing. 66, 73; *Ramsay v. Eaton*, 10 M. & W. 22; *Adams v. Jarvis*, 4 Bing. 66; *Croase v. Gardner*, Carth. 90; *Medina v. Stoughton*, 1 Salk. 210; *Holmes v. Wilson*, 10 A. & E. 511, note (a); *Haycraft v. Creasy*, 3 East. 93; *Fidler v. Wilson*, 8 Q. B. 58; *Wilson v. Fuller*, 8 Q. B. 68, 1009; *Adams v. Jarvis*, 4 Bing. 66, 73; *Shrewsbury v. Bloant*, 2 M. & G. 475; *Bree v. Holbeck*, 2 Doug. 664.

#### SHIP.

1. *Unshipping goods*.—A chartered a vessel, of which B. was master and part-owner, for a

voyage from *London* to *Sydney*, for a gross sum of 1,600*l.*, payable two months after clearance at the Custom-house. *A.* bought goods of *C.* to be shipped on *A.*'s own account on board the vessel, and to be paid for before the vessel left the port of *London*. The goods were accordingly shipped by *C.*, who took from the mate receipts as for goods shipped on *C.*'s account, and which receipts were still kept by *C.* Two days after the goods were shipped, *A.* became insolvent and unable to perform his contract with *C.*, and subsequently agreed with *C.* to rescind it, and signed an order directing *B.* to deliver the goods to them. The goods were demanded on behalf of *C.* both before and after the rescission of the contract, *C.* offering at the same time to pay all reasonable charges attending such re-delivery, and every lawful claim the owners might have upon the goods. *B.* refused to deliver the goods to *C.*, on the ground, that they having been shipped for the voyage stated in the charter-party, it was the duty of *B.* to convey them to their destination. Held, that assuming that the property in the goods passed to *A.* by the shipment, yet, as *A.* had neither become bankrupt nor taken the benefit of the Insolvent Act, but continued *sui juris* up to the time of making the agreement to rescind the contract, by the operation of that agreement and the delivery order given by *A.* the property in the goods re-vested in *B.* either in his original right as vendor, or as a new right derived from the assignment of the vendee; and that the refusal of *B.* upon the ground stated by him, to re-deliver the goods after the demand by *C.*, the contract with *A.* being rescinded, and the offer then made of the payment of the reasonable charges and all lawful claims, was a wrongful conversion, there being nothing in the terms of the charter-party that could restrain the charterer from dealing with the cargo as he thought proper, or prevent him from taking out the cargo before the sailing of the vessel, or to entitle the master to insist on carrying it to its destination.

*Quere*, whether or not *C.* derived a new right from retaining the mate's receipt and the demand made by them before the rescission of the contract? *Thompson v. Small*, 1 C. B. 328. See *Thompson v. Trail*, 2 Carr. & P. 334; 6 B. & C. 36; 9 D. & R. 31; *Boktingk v. Inglis*, 3 East, 381.

Cases cited: *Craven v. Ryder*, 6 Taunt. 433; *Ruck v. Hatfield*, 5 B. & Ald. 632; *Newberry v. Colvin*, 4 M. & P. 876; 7 Bingh. 190; *Campion v. Colvin*, 3 Bing. N. C. 77; 3 Scott, 338; *Belcher v. Capper*, 4 Man. & Gr. 502; 5 Scott, N. R. 257; *Inglis v. Usherwood*, 1 East, 515; *Paul v. Birch*, 2 Ark. 621; *Faith v. The East India Company*, 4 B. & Ald. 630; *Hutton v. Bragg*, 7 Taunt. 14; *Stevenson v. Blacklock*, 1 M. & Sel. 542; *Gladstone v. Birley*, 3 Mer. 401; 3 M. & S. 205.

2. *Partner.—Evidence.*—By an agreement between *A.*, the owner of a ship, and *B.* and *C.*, the ship was to be placed under the management of *B.* and *C.*, to load outwards from *Liverpool* with a cargo for the Cape, Singapore,

&c., consigned to their houses at these several ports. Before proceeding on the voyage, the captain received from *B.* & *C.* a letter of instructions, desiring him to proceed on his return from *Singapore* to the Cape, in which letter was the following passage:—"On your arrival there, you will call upon our managing partner *D.*, and follow such directions there as he may give you regarding such part of the cargo as is consigned to his firm, and which he requires to be landed there." At *Singapore* *B.* & *C.* shipped coffee for *London*, to be delivered to the shipper's order, pursuant to bills of lading signed by the captain, and indorsed, without his knowledge, to certain persons in *London*. When the ship arrived at the Cape, the coffee being found to be in a heated state, was, by orders of *D.*, unshipped and sold. *A.* was afterwards compelled to pay the consignees of the coffee for the non-delivery thereof. *D.* being examined upon interrogatories, expressly stated that he was not a partner with *B.* and *C.* In case brought by *B.* against *B.* and *C.*, for wrongfully unshipping and selling certain effects at the Cape of Good Hope, the declaration alleged, that "the defendants, by their agents, at the said several ports, had exercised the management and direction, ordering, control and government of the said ship, touching and in relation to the loading and unloading and freighting the same, and the consignment and disposition of the outward and homeward cargo thereof."

Held, that the description given of *B.* and *C.* in their letter of instruction, was not conclusive on them as to the point of his being a partner; and that, with respect to an objection taken as to the admissibility of his evidence, the statement made by him in his examination upon interrogatories, had the same effect as if it had been made in an examination upon the voir dire.

Held, also, that the allegation in the declaration as to the management, &c. of the ship was not proved, and therefore that the plaintiff was not entitled to recover upon the special amount.

Held, also, that having, as ship-owner, the possession of, and a special property in the coffee which had been wrongfully sold at the Cape, he was entitled to recover on a count in trover.

The court will not take upon themselves the office of a jury, to draw inferences from facts, where such facts are to be decided upon the conflicting testimony of witnesses whose credit is questioned. *Brookbank v. Anderson*, 7 M. & G. 295.

Cases cited: *Freeman v. East India Company*, 5 B. & A. 617; 1 Dowl. & Ry. 234; *Arnold v. Jefferson*, 1 Ld. Raym. 275; 2 Salk. 654; Ld. 498; *Holliday v. Cammell*, 1 T. R. 658; *Staccliffe v. Hardwick*, 2 C. M. & R. 1; 3 Dowl. C. P. 762; *Vernon v. Shipton*, 2 M. & W. 9; *Greenway v. Fisher*, 1 C. & P. 190; *Barker v. Stubbs*, 1 Man. & G. 44; 1 Scott, N. R. 131; *Russell v. Blake*, 2 M. & G. 374; 2 Scott, N. R. 574; *Poole v. Palmer*, 9 M. & W. 71; *Kell v. Nainby*, 10 B. & C. 20; *Glossop v. Colman*, 1 Stark, N. P. C. 25; *Parsons v. Crosby*, 5

Esp. N. P. C. 199; Ward v. Haydon, 2 Esp. N. P. C. 537.

3. *Insurance*.—In a policy on a seeking ship, a detention for a reasonable time for the purposes of the seeking adventure must be allowed; and whether the time is reasonable is to be determined by the state of things at the port where the ship happens to be. A ship insured, with liberty to touch, stay, and trade at several ports, arrived at one of them on the 3rd of June, when some necessary repairs were done to her. On the 2nd of September she was ready to take in cargo, but, owing to the state of the freight-market and other difficulties, no cargo was put on board till the 10th of January following. *Held*, that the delay was not unreasonable, so as to amount to a deviation. *Philips v. Irving*, 7 M. & G. 325.

Cases cited: Benson v. Chapman, 6 M. & G. 792; Metcalfe v. Perry, 4 Campb. 123; Mount v. Larkins, 8 Bing. 108; 1 M. & Scott, 165; Hartley v. Buggin, Park, Ins. 313, 652; Ougler v. Jennings, 1 Campb. 505, n.

4. *Repairs*.—*Part-owner*.—A. B., & C. were part-owners of a ship, C. being the managing owner. In June, A., on his own account, and as agent for B., contracted for the sale of their shares with C., on behalf of D., C. accepted a bill for part of the price. In August, B. executed a bill of sale from himself and A. to C. in *bona fide* pursuance of the former contract. C., after the original contract of sale, ordered some repairs to the ship, which were done before the bill of sale was executed. *Held*, that B. was not liable for such repairs. *Curling v. Robertson*, 7 M. & G. 336.

Cases cited: Thompson v. Findon, 4 C. & P. 158; Dowson v. Leake, D. & R. N. P. C. 58; Westerdell v. Dale, 7 T. R. 306; Reid v. Cox, Cowp. 636; McIvor v. Humble, 16 East, 169; Baker v. Buekle, 7 J. B. Moore, 349; Jennings v. Griffiths, Ry. & M. 42; Harrington v. Fry, 1 C. & P. 289; Young v. Brander, 8 East, 10; Briggs v. Wilkinson, 7 B. & C. 30, 35, 36; 9 D. & R. 871.

#### STAMP.

See *Lease*.

#### STOPPAGE IN TRANSITU.

Goods were forwarded in bales by ship to London, deliverable to B. & Co., or their assigns, who were factors for sale, and were landed at the defendants' wharf. B. & Co. gave the defendants orders to "weigh and deliver" the goods to M., who had contracted with B. & Co. for the purchase of them. They were accordingly weighed, and an account of the weights sent to B. & Co., who made out invoices to M. accordingly. M. re-sold several bales of the goods, which were delivered by the defendants, upon his order, to his vendees; the rest remained on the defendants' wharf until they were stopped by B. & Co. as unpaid vendors. They were never transferred in the defendants' books from the names of B. & Co. to that of M., nor was any warehouse rent paid by him. *Held*, first, that, upon these facts, the defendants never stood in the relation of

wharfingers to M., so as to be liable to an action on the case by him for the non-delivery of the goods to his order. Secondly, that, under these circumstances, B. & Co.'s right of stoppage in transitu was not determined by the part delivery to M.'s vendees. *Tanner v. Seavey*, 14 M. & W. 28.

Cases cited: Hanson v. Meyer, 6 East, 614; 2 Smith, 670; Hammond v. Anderson, 1 N. R. 69; Lucas v. Darrien, 7 Taunt. 278; 1 Moore, 29; Jones v. Jones, 8 M. & W. 431; Wentworth v. Outhwaite, 10 M. & W. 436; Whitehead v. Anderson, 9 M. & W. 518; Shelly v. Heyward, 2 H. Bl. 504; Bunney v. Poyntz, 4 B. & Ad. 571; 1 Nev. & M. 229; Betts v. Gibbins, 2 Ad. & Ell. 57; 4 Nev. & M. 64; Miles v. Gorton, 2 C. & M. 504; Dixon v. Yates, 5 B. & Ad. 315; 2 Nev. & M. 177.

#### TRESPASS.

*Custom-house duty*.—The plaintiff having landed some goods liable to duty at the Custom-house, they were taken possession of by the defendants, who were Custom-house officers, for the purpose of examination, and detained by them upon a misapprehension that they were prohibited and liable to forfeiture. They were afterwards returned to the plaintiff.

*Held*, that the defendants were not liable in trespass.

*Quere*, whether they would have been liable in another form of action if it had been shown that they had detained the goods for an unreasonable time. *Jacobson v. Blake*, 6 M. & G. 919. See 3 & 4 W. 4, c. 53, s. 105; 5 & 6 Vict. c. 47, s. 11; 59; 60.

#### WHARFINGER,

See *Stoppage in transitu*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

APPEARANCE OF PARTIES BEFORE THE MASTER.—COSTS.

*It is not an order of course to allow a party to attend the prosecution of a decree before the Master; but it will be made, if the party consent to take it at his own expense.*

A PETITION was presented on the part of the Clothworkers' Company, praying that they might be at liberty to attend the prosecution of the decree made on the hearing of this cause, upon the ground of their being interested in the matters in question.

Mr. Bacon for the petitioners.

The Master of the Rolls asked whether the petition prayed that the order should be made at the expenses of the petitioners, as it could not otherwise be made of course.

Mr. Bacon said, the petitioners were willing that the costs should be reserved to the hearing on further directions, or to abide by any order the court might make respecting them.

The Master of the Rolls said that would not do; but the petitioners' counsel having subsequently agreed to take the order in the way suggested by the court, his lordship made the order.

*Attorney - General v. Drapers' Company.*  
February 12th, 1846.

**MARRIED WOMAN.—SEPARATE USE.—AFFIDAVIT OF NO SETTLEMENT.**

*Seemble, A fund standing in the name of a married woman will not be ordered to be paid to her or her nominee, without an affidavit of no settlement, although it is clearly given to her separate use.*

Mr. Rogers sought the opinion of the court previous to amending a petition on the following point:—The fund of a married woman residing in America, was standing in the name of the Accountant-General to the account of herself and brother. There was no doubt, according to the terms of the will, of its being given to her separate use; and he submitted, under these circumstances, that an order might be made for payment to her or her nominee without the usual affidavit of no settlement.

The Master of the Rolls said, there was no reason why she might not have settled it, but he should refrain from expressing any opinion until the petition was regularly before the court.

*Jope v. Pearce.* February 12th, 1846.

**Vice-Chancellor of England.**

**BILL, DISMISSAL OF.—CONSTRUCTION OF 114TH ORDER OF MAY, 1845.**

*Where the time has expired after which a defendant who has answered is entitled to move to dismiss for want of prosecution, under the 114th order of May, 1845, he is entitled so to move, although his answer may have been put in before the orders of May, 1845, came into operation.*

*But, if one of the defendants have died since such answer was put in, whereby the suit became abated, that is an answer to the application.*

Mr. Craig moved on the part of one of the defendants in this cause, to dismiss the bill for want of prosecution, no replication having been filed, and the time limited for that proceeding by the 114th Order of May, 1845, having expired.

Mr. Koe, in answer to the motion, contended, that as the answer was put in before the orders of May, 1845, came into operation, those orders did not apply, and he cited *Tucker v. Scudamore*, 9 Jur. 1071.<sup>a</sup> One of the defendants had also died since the answer was put in by the party moving, so that the suit had become abated.

The Vice-Chancellor held, that the case was within the orders of May, 1845; but his Honour said, that an abatement of the suit would be a sufficient reason for not filing the replication, and he directed the motion to stand over, in order that an affidavit might be produced of that fact.

*Bulwinkle v. Young.* Feb. 12, 1846.

**Queen's Bench.**

(Before the Four Judges.)

**PLEADING.—ASSUMPSIT.—MORAL CONSIDERATION.**

*Declaration in assumpsit alleged that the plaintiff had cohabited with the defendant as his mistress; that the defendant had seduced the plaintiff; that the plaintiff ceased to cohabit with the defendant; and that in consideration that the plaintiff would lead a moral life, the defendant promised to pay the plaintiff the sum of 60l. annually.*

*Held, bad on general demurrer: a mere moral consideration not being sufficient to support an express promise.*

DECLARATION in assumpsit stated, that the plaintiff had cohabited with the defendant as his mistress, and that the plaintiff had been seduced and debauched by the defendant, and had thereby been greatly injured in her character and reputation, and deprived of the means of honestly procuring a livelihood; that the plaintiff ceased to cohabit with the defendant, and in consideration of the premises, and that the plaintiff would lead a moral and virtuous life, the defendant promised to pay the plaintiff an annuity of 60l. a year, and then alleged as a breach the nonpayment by the defendant. To this declaration there was a general demurrer.

Mr. Crompton in support of the demurrer.

The declaration is bad, because it does not disclose any sufficient consideration to support an express promise. It is here alleged that the defendant seduced the plaintiff, but, with that exception, the case is identical with *Binnington v. Wallis*,<sup>b</sup> where the declaration was held bad on general demurrer. In *Jennings v. Brown*,<sup>c</sup> the action was maintained, but there the maintenance of an illegitimate child was held sufficient to sustain the promise. In the case of a deed or bond, a party after he has put his seal, cannot say there is no consideration, it can only be avoided where it is given for something wicked or illegal.

Past cohabitation is a good moral consideration, but an express promise, founded simply on an antecedent moral obligation, is not sufficient to support an assumpsit. The cases on the subject are collected in a note to *Wensell v. Adney*;<sup>d</sup> *Littlefield v. Shee*;<sup>e</sup> *Eastwood v. Kenyon*.<sup>f</sup>

<sup>a</sup> See also *Whitworth v. Whitworth*, 10 Jur.

<sup>b</sup> 4 B. & Ald. 650. <sup>c</sup> 9 Mee. & Wel. 496.

<sup>d</sup> 3 Bos. & Pul. 249. <sup>e</sup> 2 B. & Ald. 811.

<sup>f</sup> 11 Ald. & Ellis, 438.

Mr. *Banks*, contra.

In Chitty on Contracts (p. 40) it is laid down, that a mere moral obligation to pay a demand or perform a duty, is in many cases a sufficient consideration for an express promise, although no legal liability existed at the time of making such promise. There is no express authority for this proposition, but there are *dicta* of Lord Ellenborough and other judges to that effect in several cases. *Hawkes v. Saunders*; <sup>1</sup> *Atkins v. Banwell*; <sup>2</sup> *Seaman v. Price*.<sup>3</sup>

Mr. *Crompton* in reply was not heard.

Lord *Denman*, C. J. The two cases which have been cited—*Binnington v. Wallis*<sup>4</sup> and *Jennings v. Brown*,<sup>5</sup> appear to me applicable to the present case. There is no binding consideration in any sense it can be applied. The case of *Eastwood v. Kenyon*<sup>6</sup> has been acted upon, and was decided by the court, after much deliberation, confirming the cases cited in the note to *Wemall v. Adney*.<sup>7</sup>

The rule clearly is, that however moral feeling may direct a thing to be done, mere moral feeling alone is not a foundation for a contract to bind the property of parties, into whatever hands that property may come. This consideration may be right in itself, and sufficient, in a moral point of view, to justify the giving of a bond, where the legal consideration for the obligation is immaterial, but it cannot found a contract where that contract requires to be on a good legal consideration.

Mr. Justice *Patteson*. This declaration is formed according to the observations made in the judgment in *Binnington v. Wallis*, in which case it did not appear that the plaintiff was seduced by the defendant. But the seduction is not a matter of importance, not even for the woman herself, for she could not maintain any action in respect of such a cause. It does not appear therefore that there has been here a legal consideration of any kind.

Mr. Justice *Coleridge*. *Eastwood v. Kenyon* establishes the rule, that a mere moral consideration will not sustain a subsequent promise. That rule is certainly subject to some exceptions, but those grounds of exception do not exist in the present case, which appears to fall entirely under the general rule.

Mr. Justice *Wightman*. I had at first some doubts about the case, but I now agree that an action cannot be brought on a precedent moral obligation, however great that may be, if the circumstances are not such as to make the precedent moral obligation a good cause of action, such as will of itself support a subsequent promise. Here it is conceded, that if there had not been an express promise, this consideration would not have been sufficient to raise an implied promise in point of law; I therefore agree with the rule as stated in the note to the

case of *Wemall v. Adney*, and think that this action cannot be maintained.

Judgment for the defendant.

*Beaumont v. Reeve*. Q. B., Hilary Term, 1846.

### Queen's Bench Practice Court.

PRISONER.—SUPERSEDEAS: STAT. 1 & 2 VICT. C. 110, s. 41.

*A prisoner once entitled to his discharge, is always so.*

The statute 1 & 2 Vict. c. 110, s. 41, enacts, that "no prisoner, whose estate shall, by an order made under the act, be vested in the provisional assignee, shall, after the making of such order, be discharged out of custody, as to any action, &c., for any debt, &c., with respect to which an adjudication can, under the provisions of the act, be made by virtue of any supersedeas, &c., for want of the plaintiff's proceeding thereon." Held, that this section does not apply to a prisoner who before the date of an order was entitled to his discharge by reason of the plaintiff's having failed to declare within a year.

A RULE had been obtained calling upon the plaintiff to show cause why the defendant should not be discharged out of custody (upon the ground that the plaintiff had not declared within a year) under the following circumstances:—In July, 1838, the defendant being then in custody, a writ of detainer was lodged against him. On the 1st of October, in the same year, the stat. 1 & 2 Vict. c. 110, came into operation, and on the 23rd of October, 1839, an order was made by the insolvent court, under s. 36, upon the petition of a creditor, vesting the defendant's estate and effects in the provisional assignee for the time being. No schedule, however, was filed, nor were any further proceedings taken in the insolvent court, or in the action in which the defendant had been detained.

*Pashley* now showed cause. The 41st section of the stat. 1 & 2 Vict. c. 110, [see an abridgment of the section in the note at the head of the case,] is a bar to the defendant's discharge, for a petition having been presented to the Insolvent Court, and an order made, vesting his estate and effects in the provisional assignee, the case is one "with respect to which an adjudication could be made by that court" within the meaning of the statute.

*Willes*, contra. This application is grounded on the rule of court, R. I. 2 Will. 4, s. 35, which directs that "a plaintiff shall be deemed out of court unless he declare within one year after the process is returnable." Here the detainer was lodged in June 1838, no petition was filed till October 1839, and no proceedings having been taken in the matter in the meantime, the plaintiff was not only entitled to a supersedeas before any proceedings were taken under the act, but the suit was completely out of court. The defendant then

<sup>1</sup> Cowp. 290, 294.      <sup>2</sup> 2 East, 506.

<sup>3</sup> 2 Bing. 428.      <sup>4</sup> 4 B. & Ald. 650.

<sup>5</sup> 9 Mees. & Wel. 496.      <sup>6</sup> 11 Adol. & Kl. 488.

<sup>7</sup> 3 Bos. & Pul. 249.



having been once entitled to his discharge, is always so according to the practice with regard to prisoners. The 41st section of the act, therefore, is inapplicable. But section 7 of the same statute places the matter beyond a doubt, for the defendant, having been in custody at the time of the passing of the act, would have been entitled to his discharge, by the provisions of that section, upon entering a common appearance.

*Car. ado. vult.*

*Williams, J.*, now (Jan. 28) said, the questions are, first, whether the defendant had been in custody for such a length of time as would entitle him to his discharge; and, secondly, whether the stat. 7 & 8 Vict., c. 41, was applicable to the case. Upon the first point there can be no doubt; the dates speak for themselves. Then, as to the second question, I think that, taking the 41st section in its fair and wide construction, it cannot apply to a person who was then entitled to his discharge. The defendant must therefore be discharged.

*Rule absolute.*

*Hallett v. Cresswell*, Hilary Term, Jan. 24, 28, 1846.

*Erratum.*—The reader is requested to insert the words “*between the parties*” after the words “*matter of difference*,” in line 3 of the head note to *Crosbie v. Holmes*, in last week’s number, p. 343, col. 2.

### Common Pleas.

#### DISTRINGAS.—STATEMENT OF DEFAULT TO APPEAR IN AFFIDAVIT.

*The affidavit in support of a motion for a distringas should state simply that the defendant had not appeared, and is not sufficient where it contains the additional words, “according to the exigency of the writ.”*

*Wilkins*, Serjeant, applied for a distringas to compel the defendant’s appearance. The affidavit on which the motion was made stated, in addition to the usual formal matters, that the defendant had not appeared according to the exigency of the said writ.

*Maule, J.* Not having appeared according to the exigency of the writ, may mean that the party had not appeared within eight days of the service, although he has since appeared. The affidavit in that form is defective.

*Rule refused.*

*Draye v. Bird*. Hilary Term, 1846.

### Exchequer.

#### BILL OF PARTICULARS.—RAILWAY COMPANY.—COSTS.

*In an action by an engineer against a railway company, the particulars of the plaintiff’s demand claimed one gross sum for surveying, travelling expenses, assistance, &c. Held, sufficient, and that it was not neces-*

*sary to specify the amount of the particular items which composed the general charge.*

*Though, as a general rule, a party who shows cause in the first instance, is not entitled to costs, yet there is an exception in cases where the rule, if granted, would prejudice the party by causing delay.*

In an action brought by an engineer against some of the committee of a railway company, the particulars of the plaintiff’s demand was as follows:—

1845. Between 18th Sept. and 30th *£. s. d.*

Nov. To preliminary survey and examination of the country between Leeds and Carlisle, in order to determine the best line, including travelling charges and assistance

250 0 0

1845. Between 27th Sept. and 30th

Nov. To personally examining the country between Leeds and Carlisle, making sundry trial sections, laying out the main line, finding surveyors, levellers and engineers, superintending the same, meeting the solicitors, arranging with them, and assisting at the reference; taking all the cross sections of the roads and making the proposed alterations therein; getting out the finished plans and sections, furnishing the solicitors with tracings to take their reference, meeting solicitors and putting numbers on the plans to correspond with the reference; laying out all the gradients and curves on the plans and sections, superintending the engravings and furnishing the engraver from time to time with the requisite plans and sections, correcting the proofs; sundry meetings with the chairman of the committee of selves and assistants, and generally directing and superintending all the different departments of surveying, levelling, engineering and engraving, &c., including tavern bills, travelling charges, and office expenses

8960 0 0

To laying out, surveying, and levelling between Bramholt Tunnel, on the Leeds and Thirsk railway, passing by Otley towards Bolton, according to the original intention of the committee, 10 miles at 55*l.*

550 0 0

To surveying, levelling, and laying out and alteration in the line near Bolton, to avoid the opposition of the Duke of Devonshire, four miles at 55*l.*

220 0 0

To surveying, levelling and laying out a deviation of the line Rettlewell and Thwaites Bridge, in order to adopt the atmospheric principle, by order of the board,

sixteen miles at 55*l*. . . . . 880 0 0

To ditto, ditto, another deviation to avoid the second tunnel at Bainbridge, including all the necessary documents fit for deposit, furnishing solicitors and engravers with plans, and completed in the same manner as the main line, six miles at 105*l*. . . . . 630 0 0

To Mr. Arrowsmith the engraver's bill . . . . . 1945 0 0

12,885 0 0

By cash on account at various times . . . . . 6000 0 0

£. 6885 0 0

A summons having been taken out for further and better particulars, *Alderson, B.*, made an order, so far as related to the sums alleged to have been paid for the defendants' use, but refused it as to the other part of the plaintiff's claim.

*Montagu Smith* now moved for a rule nisi, for further and better particulars. The second item contains one gross charge for surveying, travelling expenses and assistance, and it is impossible for the defendants to know how much is claimed by the plaintiffs for their own labour, and how much for that of others, nor can they tell what is claimed for labour generally, and what for money paid. In the case of an attorney's bill, such a particular would be clearly insufficient. [*Alderson B.*—"An attorney's bill is different, as each item is subject to taxation."] A bill of particulars should afford such information as to enable the defendants to pay into court any part of the claim which they cannot resist.

*Sir John Bayley*, who appeared to show cause in the first instance, was stopped by the court.

*Pollock, C. B.*—I think my brother *Alderson* exercised a proper discretion, and that we ought not to grant a rule. There is a distinction between the explanation of a charge made in the particular, and the charge itself. For instance: if in this case the charges for stationery, travelling expenses, &c., were themselves distinct subjects of charge, no doubt particulars ought to be given of each. But that does not apply to where there is a general charge, and other charges are inserted as mere explanation. There is no rule for an engineer different from that of a house builder or a coachmaker. Suppose the latter sends in a bill of 300*l*. for a carriage, and includes all the parts of which the general charge is made up, namely, the wheels, the painting, &c.; no judge would order him to give particulars of every item. The same rule applies to a surveyor or engineer; he must give such information as to enable the party to anticipate what he is to meet, and to pay money into court. It is argued that the defendants cannot tell how many miles the plaintiffs intend to charge for, but there is the terminus *a quo* and the terminus *ad quem*, and it is very easy to get a map of the county and see the distance between the two points.

*Alderson, B.*—The plaintiff has given all reasonable and practicable information, and if we were to require more, it would be making the bill of particulars a trap for the plaintiff, not a guide for the defendant.

*Sir John Bayley* applied for the costs of appearing to show cause.

*Montagu Smith* contended that a party showing cause in the first instance, was not entitled to costs; he cited 2 Chitty Arch. 1194, and cases there cited.

*Pollock, C. B.*—No doubt the general rule is so, but the cases cited are those in which the rule nisi, if granted, would not have operated as a stay of proceedings, and consequently the opposite party could not be prejudiced by neglecting to show cause in the first instance. But here the rule would have caused delay, and prevented the plaintiff from trying at the next sittings. We therefore think that he is entitled to the costs of opposing the application.

Rule refused, with costs.

*Rennie and another v. Beresford and others.*  
Hilary Term, 27th Jan. 1846.

# BANKRUPTCY DIVIDENDS DECLARED.

From Dec. 30th 1845, to 30th Jan. 30, 1846, both inclusive.

- Ashbarry, J. Holm Lacy, Hereford, Farmer. Final div. 11*d*.
- Ayling, J., Commercial Street, Leeds, Cabinet Maker. Div. 10*d*.
- Barry, E., Bristol, Victualler. Div. 6*s*. 10*d*.
- Beet, J., Bradford, Dyer. Div. 2*s*.
- Betts, J. Y., Cardiff, Grocer. Final div. 1*s*. 7*d*.
- Bourne, J., Bemmersley, Norton-in-the-Moors, Stafford, Printer. Div. 6*d*.
- Bower, A., Basford, Stafford, Banker. Div. 1*s*. 3*d*.
- Bromhead, W., Birmingham, Merchant. Div. 6*d*.
- Barleigh, W., Haverhill, Suffolk, Scrivener. Div. 2*s*.
- Carruthers, J., Blackburn, Woollen Draper. Div. 3*s*. 10*d*.
- Clarke, J., R. Mitchell, J. Phillips, and T. Smith, Bankers, Leicester. Div. 4*s*.
- Clarke, Mitchell, Phillips, and Smith, Leicester, Bankers, separate estate of J. Clarke, div. 5*s*. On separate estate of T. Smith, div. 20*s*.
- Courtney, J., Bristol, Banker. Div. 1*s*.
- Dakin, W., Manchester, Glass Manufacturer. Div. 1*d*.
- Danks, J., Birmingham, Wharfinger. Div. 5*s*.
- Fawcett, S., 68, Chiswell Street, Draper. Div. 3*s*. 9*d*.
- Gale & Son, Love Lane, Shadwell, Rope Makers. Div. 6*d*.
- Graham, Sir R., London, J. Railton, Manchester, and J. Young, Manchester, Merchants. Div. 2*d*.
- Hansen, P., Newcastle-upon-Tyne, Merchant. Div. 2*s*.
- Haigh, J., Hogley, Almondbury, York, Clothier. Div. 10*s*.

Haycock, J., jun., Old Broad Street, but now of Wells, Norfolk, Corn Factor. Div. 1s. 10d.  
 Hesketh, E., Hulme, Lancaster, Victualler. Final div. 7½d.  
 Hutchins, J., Bath, Boot Maker. Div. 3s. 6d.  
 Imray, J., Old Fish Street Hill, Upper Thames Street, Stationer. Div. 1½d.  
 Kimble, R., 27, Great Marylebone Street, Shoe Maker. Div. 4s. 10.  
 Kayvett, E., Buckingham Cottage, Great Stanmore, Teacher of Music. Div. 4s.  
 Lewis, J., Bristol, Mercer. Div. 1d.  
 Limes, J. H., Richmond, Butcher. Div. 1s. 8d.  
 Lockhart, T. and C., Fulham, Florists, Div. 16s. 7d., on separate estate of C. Lockhart. Div. on separate estate of T. Lockhart 2s. 3d. Firm div. 12s.  
 Low, D., Adam's Court, Old Broad Street, Merchant. Div. ½d.  
 Lowe, W., St. Augustine Back, Bristol, Hardwood Turner. Div. 4s. 6d.  
 Lucas, S. M., Long Buckby, Northampton, Money Scrivener. Div. 3s. 9½d.  
 May, E., Aldgate, Draper. Final div. 8s.  
 Maybury, J., J. Maybury, and J. Maybury, jun., Bilston, Stafford, Iron Manufacturers. Final div., on separate estate of J. Maybury, sen., 1s. 3½d.  
 Mills, W. H., Mark Lane, Wine Merchant. Div. 3s. 8d.  
 Morton, D., 18, Eastcheap, Fishmonger. Div. 11d.  
 [The remainder of this list will be given in our next.]

## PROCEEDINGS IN PARLIAMENT.

### House of Lords.

#### NEW BILLS.

General Registry of Deeds.

Game Law Amendment. See the bill, p. 354, *ante*.

Administration of Criminal Justice.

Duties of Constables. See the bill, p. 311, *ante*.

Religious Opinions Relief.

### House of Commons.

#### NEW BILLS.

Small Debt Courts for  
 Somersetshire,  
 Northampton,  
 Birkenhead,  
 St. Austell.

#### INNS OF COURT.

A statement has been ordered on the motion of Mr. Christie of the regulations of the Inns of Court, regarding the admission of students and calling to the bar, with the dates of such regulations and the authority for making them, and distinguishing as to members of the university.

## NOTES OF THE WEEK.

### LUDLOW CHARITY.

The long protracted Chancery proceedings

in this matter seem about to terminate. On Saturday last, the counsel (with the exception of Sir Charles Wetherell) of the various litigating parties signified to the Chancellor their acquiescence in the terms of compromise offered on the part of the charity. Lands to the clear value of 1500*l.* per annum, are to be set apart for the endowment of the Ludlow school. A draft bill for an act of the present session of parliament is to be immediately prepared and settled by the Master, and a scheme for the school is to be forthwith submitted to the Lord-Chancellor. The income of 1500*l.* is to be payable from the 12th of March last; and it was stated at the bar, that the taxed costs of the parties representing only the master and usher of the present school amounted already to that sum.

### RE WHITING (MASTER LYNCH'S CHIEF CLERK.)

Mr. Romilly finished his reply, in this case on the 19th; and the Lord-Chancellor having remarked, that this was a case of great importance, said, that the Master of the Rolls and he would consider the matter before a decision was given. It was heard on the 14th inst., when Mr. Campbell appeared for Wright, the junior clerk, Mr. James Parker and Mr. Stonor for Whiting, the chief clerk. The original hearing on the 30th of July last, is reported at length in the last volume of the *Legal Observer*, page 277, and the petition is printed at page 217 of the same volume.

### LECTURES AT THE INNS OF COURT.

We understand that deputations from the inns of court have met on the proposed plan of improvement in legal education. The proposal has been favourably received, but has not yet been formally adopted. We have heard, that whilst the Middle Temple will establish lectures on *Jurisprudence* and *Civil Law*, the Inner Temple will take the department of *Commons Law*, and Lincoln's Inn that of *Equity*. There will also be a course on *Conveyancing*.

The aim should be to combine the scientific with the practical.

## THE EDITOR'S LETTER BOX.

A correspondent does not clearly state his point as to indentures of apprenticeship.

The letters of "Doubtful;" "A Solicitor;" and "An Articled Clerk," have been received.

The remarks of "N. S." on the 7th lecture on the Real Property Amendment Acts shall be considered.

Another letter on "Examination Distinctions" shall be noticed at an early opportunity.

We are requested to state, that the firm of Messrs. Young and Son, referred to in the case of *Haselham v. Young*, p. 283, *ante*, ("power of one attorney to bind his partner,") is not that of Young and Son, of 29, Mark Lane.

# The Legal Observer.

SATURDAY, FEBRUARY 28, 1846.

———“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## DEBTORS AND CREDITORS ARRANGEMENT ACT.

At the commencement of the present Session of Parliament we ventured to express a hope, that the absorbing subject of the Corn Laws would cause a suspension of the crude experiments which have been dignified with the name of Law Reform, and at the same time adverted to the pressing necessity which existed for some practical enactments to correct the wholesale system of fraud, generated, encouraged, and protected, by the present state of the law of debtor and creditor.

We learn from the report of the Committee of Merchants and Traders, appointed for the purpose of obtaining an amendment of the Law of Bankruptcy and Insolvency, submitted to a public meeting held at the London Tavern, on the 6th instant, that the Bill introduced into the House of Commons at the close of the last session, by Mr. Masterman and Mr. Hawes, is to be prosecuted in the present session of parliament, and the committee express a confident opinion that it will receive the sanction of the legislature.<sup>a</sup> Concurring in the spirit of the proposed measure, and participating in the general approval with which the committee state that its most important provisions have been met, we must nevertheless deprecate anything like precipitancy in forcing forward a measure of such importance, and we trust we may not be considered as undervaluing the practical knowledge of those from whom it has emanated, when we respectfully warn them that they will find their labours worthless, and the measure they introduce will end in

their own disappointment and that of the public, if they neglect to secure the assistance of adequate persons professionally acquainted with the law and practice of bankruptcy and insolvency. On this point we shall only repeat our earnest hope, that the subject should be fully considered in all its branches, before any new measure of extensive operation acquires the force of a law.

With respect to the 7 & 8 Vict. c. 96, generally known as Lord Brougham's Act, by which the entire abolition of imprisonment for debts under 20*l.* was effected, the committee express themselves in these terms:—"The palpable injustice of this portion of the act, its total inapplicability to the necessities of the trading classes of the community, the ruin it entailed on many of the smaller traders, and the uncertainty it introduced as to the probable realisation of all debts under that sum, caused, perhaps fortunately, a reaction of the public mind on this subject, and led to the avowal of principles in support of the *unfortunate creditor*, and their practical introduction into the Act of Parliament of last session,<sup>b</sup> by which imprisonment for small debts, in a large class of cases, was re-introduced." Whilst describing the Act 7 & 8 Vict. c. 96, in language so unmeasured and emphatic, the report never even for a moment glances at the twin measure<sup>c</sup> nearly contemporaneous,<sup>d</sup> emanating, it is said, from the same prolific parent, and which is entitled "An Act for facilitating Arrangements between Debtors and Creditors."

<sup>b</sup> 8 & 9 Vict. c. 127.    <sup>c</sup> 7 & 8 Vict. c. 70.

<sup>d</sup> The 7 & 8 Vict. c. 96, obtained the royal assent on the 9th August, and the 7 & 8 Vict. c. 70, on the 7th August, 1844.

<sup>a</sup> See a statement of the scope of this bill in our last volume, p. 460.

Whatever may be the imperfections and demerits of the measure which has so deservedly excited the indignation of the Committee of Merchants and Traders, they are trivial and insignificant when compared with the atrocious violation of all equitable principle, and the injustice to creditors, arising from the provisions of the act last referred to. If the measure be so monstrous, it may be asked, why have not its provisions been canvassed and exposed, and how comes it that the profession and the public have not ere this expressed themselves decidedly on the subject, and called for the repeal of the obnoxious act? The answer is simple and obvious. The great body of the merchants and traders of the kingdom are wholly ignorant of the existence of such an act, and a large proportion of the members of the legal profession are, we apprehend, very partially acquainted with its provisions. The measure is framed so as to conceal and preclude a knowledge of its operation—it is worked in secrecy and privacy—and in this respect is as detrimental to the public as it is uncongenial to the spirit of our legal institutions. No report has ever yet been published of the proceedings at any meeting held under this act, or of the decisions of the commissioners in respect of such proceedings, and the unfortunate creditor who finds himself suddenly deprived of all remedy against a debtor by means of its enactments, has hitherto complained in private, unheard and unheeded. Perhaps at different periods some dozen professional men, or it may be twice that number, have attended meetings held under this act, as the representatives of individual creditors, or of the petitioning debtor, and there is only a solitary instance recorded in which its provisions have yet become the subject of discussion in a court of law,\* and in that case the point in dispute arose incidentally, and it appeared that the Commissioners of Bankruptcy, who are specially appointed, not so much to administer, as to superintend the administration of the act, had from the outset acted under a mistaken impression as to the extent of their own jurisdiction under it.

In the case of *Mazeman v. Davis*, the question was, whether a protection granted to a petitioner under the 7th section of the act could be extended from time to time,

so as to protect the petitioner from arrest at the suit of a judgment creditor?

The 1st section enacts, that “any debtor who is unable to meet his engagements with his creditors, not being a trader within the meaning of the statutes relating to bankrupts, may with the concurrence of one third in number and value of his creditors (testified by their signing his petition) present a petition to the Court of Bankruptcy, setting forth a full account of his debts, and the consideration thereof, and the names, residence, and occupations of his creditors, and also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to, or claimed by him, and of all property of what kind soever held in trust for him; and also setting forth that he is unable to meet his engagements with his creditors and the true cause of such inability; and also setting forth such proposal as he is able to make for the future payment, or the compromise of such debts or engagements, and that one third in number and value of his creditors have assented to such proposal, and praying that such proposal (or such modification thereof as by the majority of his creditors should be determined) should be carried into effect under the superintendence and control of the said court, and that he the said petitioning debtor should in the mean time be protected from arrest by order of the said court.”

The 2nd section then enacts—

“That upon the presentation of such petition, one of the commissioners of the said court, in such rotation as by order of the said court shall be appointed, shall *privately* examine into the matter of the said petition, and for that purpose shall have power to examine upon oath such petitioning debtor, and any creditor concurring in his petition, and any witness produced by such petitioning debtor, and if such commissioner shall be satisfied of the truth of the several matters alleged in such petition, and that the debts of such petitioning debtor have not been contracted by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same,” or by reason of any judgment in certain actions enumerated, “and that such petitioning debtor has made a full disclosure of his debts and credits, estate and effects, and is desirous of making a *bona fide* arrangement with all his creditors, and that his proposal to that effect is reasonable and proper to be executed under the direction of the said court,” &c., then the commissioner is empowered to direct a meeting of all the creditors of the petitioning debtor to be held at a time and place appointed, and notice of such meeting to be given to the creditors.”

By the 3rd section

The commissioner is to appoint a proper person to preside at such meeting of creditors and report the resolutions thereof to the com-

\* *Vide* the case of *Mazeman v. Davis*, Orig. Rep. Leg. Obs. ante, p. 294.

missioner. And by the 7th sect. the commissioner is empowered, "*upon the examination of such petition as aforesaid, to grant to such petitioning debtor a temporary and limited protection from arrest, and such petitioning debtor shall be accordingly free from arrest, for such time and within such limits and conditions as shall be specified in the said protection,*" &c.

If a major part of the creditors at a first meeting, and three-fifths in number and value of the creditors present at the second meeting assent to the proposal of the petitioning debtor, or of any modification thereof, and sign a resolution to that effect, such resolution is, by sect. 6, to be submitted to the commissioner within fifteen days, and if he thinks it reasonable and proper, he is to cause it to be filed and entered of record," and shall grant to such petitioning debtor a certificate of such filing, and shall from time to time indorse on such certificate his protection of such petitioning debtor from arrest."

In the case alluded to, the commissioner, upon the examination of his petition, granted the petitioner, James Phineas Davis, a protection from the 14th July, 1845, to the 4th October, under sect. 7, and directed that a meeting of creditors should be held on the first of Oct. under sect. 2, and the commissioner subsequently, but before he had granted a certificate of the filing of any resolution of creditors under section 6, enlarged the protection from time to time, until the 6th December. On the 14th November, the defendant was arrested at the suit of the plaintiff, under a writ of *excegi facias*, and upon an application for his discharge from custody, Mr. Justice Patteson, sitting in the Bail Court, decided, that the commissioner had no power to prolong the protection granted upon the examination of the petition, and that the defendant was legally arrested.

Since the decision of this case, the practice, we understand, has been for the commissioners to grant a prolonged protection—as for six or twelve months—conditioned to be void, if the proposal made by the petitioning debtor should not be assented to by his creditors. It does not appear that this modification confers any advantage on creditors, and indeed it is difficult to conceive that any alterations or improvements in practice could remedy a measure so essentially defective and unjust.

From the preliminary sections which are above cited, it will be seen that upon a mere *ex parte* application, privately made—supported by the signatures of friendly creditors—without any notice to and therefore constantly made without the knowledge of any adverse creditor—the commissioner is to be satisfied of the truth of the several matters alleged in such petition, and that the proposal made by the petitioner is reasonable and proper. And what are the materials upon which the

commissioner is called upon to determine questions so difficult and complicated? He may examine upon oath the petitioning debtor, and any creditor concurring in his petition, and any witness produced by such petitioning debtor; but neither at this nor any other stage of the proceedings, has the commissioner any authority to examine a dissenting creditor, or any witness produced by him. As may be supposed, those creditors who, at great expense, after pursuing the ordinary remedies provided by the law, find themselves suddenly barred of their right, and without a hearing deprived of the power of enforcing their claims against the person of their debtor, are loud in their complaints. The number of those whose interests are compromised, and who are mocked and insulted by this outrage on justice is not yet so considerable as to excite public attention, but the number is daily increasing, as the somewhat extensive class who are unable and unwilling fairly to meet their engagements, become acquainted with the extraordinary facilities which this act affords for defeating the just claims of their creditors, and avoiding all responsibility.

We repudiate the scandal which would be affixed to our legislative institutions, if there were a particle of truth in the rumour which has obtained considerable publicity and some credit, that the act in question was passed to meet the particular exigencies of an indiscreet young gentleman, who has the good fortune to be powerfully connected, and whose connections had an insuperable horror to his appearing in the position of an ordinary insolvent. However this may be, the act has already been taken advantage of by some persons who are not very highly connected, and the temptations which it holds out to the unprincipled and dishonest are too powerful, to suppose it possible that its provisions should not be rapidly extended to a class of cases, which the framers of the act probably never contemplated its application to.

It is not too much to say, that any alteration of the law of debtor and creditor which does not essentially alter the provisions of this statute, or sweep it away altogether, must be necessarily imperfect and unsatisfactory, and with this view we would earnestly invite the attention of the Committee of Merchants and Traders, as well of the profession, to the subject.

## LAW OF PARTNERSHIP

## SECRET PARTNERSHIP WITH A PAWN-BROKER ILLEGAL.

THE policy of the law has led to the passing of a statute, the 39 & 40 Geo. 3, c. 99, whereby it is enacted, that for the better manifesting by whom the trade or business of a pawnbroker is carried on, all persons engaged in that occupation shall cause their christian and surnames to be painted or written in large legible characters over the door of their establishments, adding thereto the word "pawnbroker" or "pawnbrokers," as the case may be; for the neglect of which regulation they are liable to certain penalties, to be levied summarily by the warrant of two justices of peace.

In the case of *Gordon v. Howden*, reported in the number just published of Messrs. Clark and Finnely's Reports, p. 237, the House of Lords were called upon to consider how far the statute operated upon a contract between two parties in Edinburgh—the act extending to Scotland as well as England.

The ruling precedents relied upon were those of *Armstrong v. Lewis*, 2 Crompt. & M. 284, and *Armstrong v. Armstrong*, 3 Myl. & Kee. 53. In those cases an agreement for a secret partnership in the pawnbroking business was held illegal and void. The last of these cases was decided in 1834, by Lord Chancellor Brougham, before whom a great clamour was made in the argument on the part of the pawnbrokers, that they were exposed to suspicion, and held to be a suspected class of individuals, and that it was treating them with indelicacy so to consider the act, and so to construe it. But the answer of the Lord Chancellor was conclusive, that no honest respectable pawnbroker would feel that there was any impropriety or any indelicacy in being called upon to disclose his name and the name of his partner with whom his business of pawnbroking was carried on; that it tended to prevent dishonest and fraudulent proceedings, oppressive to the poor as well as iniquitous in themselves; that it tended to encourage and protect fair traders, and to separate and distinguish them from those who were unfair; and that consequently no person had any right to complain of the act of parliament or the mode of enforcing it.

One is at a loss to discover from the report upon what reasoning the court in

Scotland proceeded; but they differed from the English decisions, and held the agreement good, and hence, consequently, this appeal to the Lords.

The House of Lords, however, upon hearing counsel, at once reversed the decision of the court below, Lord Campbell pithily remarking, that "if the act of parliament is carried into effect, the agreement is void: if the agreement is carried into effect, the act of parliament is violated. They can not stand together."

## NOTICES OF NEW BOOKS.

*The Laws of the Customs, compiled by direction of the Lords Commissioners of Her Majesty's treasury, and published under the sanction of the Commissioners of Her Majesty's Customs; with Notes, and a General Index.* Edited by J. G. WALFORD, Esq., Solicitor for the Customs. London: Longman & Co., Paternoster Row, 1846. Pp. 804.

THIS valuable work of Mr. Walford, the Solicitor of the Customs, has been prepared by the direction of the Lords of the Treasury. It comprises not only those acts usually called "Customs Acts," but others which are wholly or partly enforced by the officers of customs. We have thus an entire view of the statute law on this subject comprised in one volume.

A great improvement has been effected, of late years, in this large and complicated branch of the revenue, by consolidating and amending the vast collection of acts which formerly existed. Mr. Walford states that—

"For some time prior to the year 1825 it had been under consideration to consolidate the different acts relating to the management and collection of the revenue of customs in the united kingdom and the colonies, and those relating to some other subjects nearly connected with that primary one.

"These subjects were the prevention of smuggling, the law of navigation, the registering of vessels, the warehousing of goods, the granting bounties, and some provisions relating to the Isle of Man.

"The necessity of such a measure, and the labour required to carry it into execution, may be judged of from the fact, that an Abridgment of the Laws of the Customs had been published by Mr. Jickling, which occupied 1,375 large quarto pages, and the statutes which it was requisite to repeal, with a view to the consolidation, amounted to 443."

It appears that the late Mr. Hume, the

Comptroller of the Customs in London, executed this task, except that part which related to the prevention of smuggling, which was confided to Mr. Thackeray, then Assistant Solicitor of the Customs; and Mr. Walford thus describes the progress of the Customs legislation:—

“The whole matter was arranged by Mr. Hume, under ten heads, the regulations respecting each of which formed a separate act.

“The acts thus prepared were introduced into parliament under the correction and care of Mr. Herries, then one of the joint secretaries of the treasury. They received the royal assent in the month of July, 1825, and, with such amendments of them as have been made from time to time, have contained all the statutable provisions in force upon the subjects of their respective titles. In the interval between the years 1825 and 1833 several amendments of Mr. Hume's acts were made, but his arrangement was still observed, and each amending clause was classed under such of the above heads as it belonged to.

“In the session of 1833 these amendments were consolidated with the existing acts, the bills by which that measure was effected being introduced into parliament under the correction and care of the late Lord Sydenham, at that time President of the Board of Trade.

“During the following twelve years other amendments continued to be made from time to time,—the most important of them being the substituting hard labour as a punishment for smuggling, in certain cases in lieu of impressment into the naval service, in others in lieu of penalty; the removing the prohibition to export machinery; and the remodelling the duties.

“As these amendments could only be found by referring to the different acts by which they were made, it was considered to be expedient that a fresh consolidation should take place.

“To effect this a repealing act has been passed by which the then existing ten acts and all amendments of them were repealed, and ten other acts have been also passed founded upon Mr. Hume's consolidation, adopting his arrangement and embodying in their respective places the different existing provisions by which alterations had been effected.”

The ten acts placed at the commencement of this compilation contain the existing law on the several subjects to which they relate. And other acts and parts of acts have been added which appear requisite, as well for the information of the public, as the guidance of the officer in the execution of the laws of the Customs.

Mr. Walford liberally ascribes great merit to the late comptroller, who edited a work similar to the present, in 1836; but the recent Consolidation Acts having rendered a new collection necessary, the

task was entrusted to Mr. Walford, and he has ably performed his duty.

## NEW BILLS IN PARLIAMENT.

### ADMINISTRATION OF CRIMINAL JUSTICE.

IN certain cases of felony the court is not empowered by law to award sentence of *transportation* for a less period than the term of the offender's life, or some long term of years; or sentence of *imprisonment* for any shorter term than two years. It is desirable that some of such offenders should suffer transportation or imprisonment for a shorter period respectively at the discretion of the court before which they are convicted. It is therefore proposed to be enacted as follows:—

1. That in all cases where the court is now by law empowered to award any sentence of transportation it shall be lawful for such court, at its discretion, to award such sentence for any term of years not less than seven years; and that in all cases where the court has power to award sentence of imprisonment it shall be lawful for the same court, at its discretion, to award such sentence for any time, however short, which shall appear just under all the circumstances.

It is now required by the 4 & 5 W. 4, c. 36, s. 13, that no indictment shall be presented before the grand jury of the Central Criminal Court for certain offences, unless the party prosecuting shall have first entered into recognizances to prosecute. It is now proposed to enact—

2. That the said provision be and the same is hereby repealed; and that bills of indictment may be preferred by any person before the grand jury of the said court for any offence, in the same manner as may be done before any other grand jury.

Doubts having been raised as to the proper place of trial, where indictments have been removed by writ of *certiorari* from the Central Criminal Court into the Court of Queen's Bench. It is therefore proposed to enact—

2. That every writ of *certiorari* for removing an indictment from the said Central Criminal Court shall specify the county or jurisdiction in which the same shall be tried; and a jury shall be summoned and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction.



## PARLIAMENTARY RETURNS.

## Court of Chancery.

THE Annual Return of the State of the Suitors' Fund and the Suitors' Fee Fund, has just been made by the Accountant-General. This we know is always an interesting subject to our readers, and we shall therefore make such extracts as may be desirable for their information.

For the present we select the Suitors' Fee Fund Account, which is as follows :—

## PAYMENTS, FROM NOV. 25, 1845, TO NOV. 24, 1845.

	£	s.	d.	£	s.	d.
Compensation to five Masters, at 725 <i>l.</i> per annum .. .. .	3,625	0	0			
Eleven Masters' Chief Clerks' salaries, at 1,000 <i>l.</i> each, less a proportionate part accrued between the death of one and appointment of another .. .. .	10,997	5	8			
Eleven Masters' Junior Clerks, at 150 <i>l.</i> each .. .. .	1,650	0	0			
Total Masters .. .. .				16,372	5	8
Salaries to ten Registrars .. .. .	15,900	0	0			
Compensation to ditto, under 3 & 4 Will. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 53 .. .. .	4,000	0	0			
Salaries to fourteen Registrars' Clerks .. .. .	6,800	0	0			
Compensation to one ditto, under 5 Vict. c. 5, s. 53 .. .. .	200	0	0			
Pension to a retired Registrar's Agent, under 3 & 4 Will. 4, c. 94, s. 48 .. .. .	273	0	0			
Total Registrars .. .. .				27,173	0	0
Master of Reports and Entries' salary .. .. .	1,000	0	0			
Clerk of Reports .. .. .	200	0	0			
Two Clerks of Entries .. .. .	250	0	0			
Compensation to one Clerk of Entries .. .. .	100	0	0			
Salaries to Clerks of Accounts .. .. .	2,550	0	0			
Compensation to late Master of Reports and Entries .. .. .	2,250	0	0			
Total Report Office .. .. .				6,350	0	0
Part of Examiners' salaries to two Examiners, at 700 <i>l.</i> per annum .. .. .	1,400	0	0			
Compensation to one Examiner, under 3 & 4 Will. 4, c. 94 .. .. .	200	0	0			
Salaries to Examiners' two Clerks, at 150 <i>l.</i> per annum .. .. .	300	0	0			
Compensation to one ditto .. .. .	200	0	0			
Total Examiners .. .. .				2,100	0	0
Two Clerks of Affidavits' salaries .. .. .				650	0	0
Salaries, &c. under 5 & 6 of her present Majesty, c. 84 :						
Two Masters in Lunacy .. .. .	4,000	0	0			
Travelling expenses .. .. .	659	8	0			
Five Clerks to Masters in Lunacy .. .. .	1,838	10	4			
Rent of Premises .. .. .	330	0	0			
Expenses of Offices .. .. .	666	15	9			
Salary of Secretary of Lunatics .. .. .	800	0	0			
Four Clerks in Secretary's Office .. .. .	710	0	0			
Expenses of Offices .. .. .	430	12	11			
Compensation to late Commissioners in Lunacy .. .. .	460	0	0			
Ditto to the late Clerk of the Custodies .. .. .	477	3	6			
				10,392	10	6
Salaries, &c. under 5 & 6 of her present Majesty, c. 103 :						
Six Taxing Masters .. .. .	12,000	0	0			
Six Clerks to ditto .. .. .	1,500	0	0			
Clerk of Enrolments .. .. .	1,200	0	0			
Three Clerks to ditto .. .. .	750	0	0			
Four Clerks of Record .. .. .	4,800	0	0			
Twelve Clerks to ditto .. .. .	3,000	0	0			
Copy Money for writing and copying in the office of the Taxing Masters, Clerk of Enrolments, and Clerks of Records* .. .. .	6,111	17	1			
Rent of Taxing Masters' Offices .. .. .	800	0	0			
Expenses of Taxing Masters, Enrolment, and Record and Writing Clerks for stationery, coals, candles, servants' wages, insurance, rates and taxes, and for furniture, builders, and surveyor for alterations .. .. .	1,545	19	9			
				31,707	16	10

\* £615 6s. 4d., part of this sum, was not in fact due before the 7th December 1845, but is necessarily included in this Account, as chargeable upon the Fees upon the other side of the Account.

PAYMENTS—continued.

	£	s.	d.	£	s.	d.
Compensation for loss of Offices and Profits to the undermentioned Officers, under 5 & 6 Vict. c. 103:						
Five Six Clerks .. .. .	7,203	5	10			
Twenty-two Sworn Clerks .. .. .	30,209	11	4			
One Waiting Clerk .. .. .	109	8	8			
Five Agents to Sworn Clerks .. .. .	1,431	1	0			
Three Clerks of Enrolments .. .. .	1,228	3	3			
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk .. .. .	2,385	8	4			
Proportion to deceased Deputy Record Keeper and Agent .. .. .	99	2	5			
Secretary of Decrees and Injunctions .. .. .	49	13	4			
Receiver of the Sixpenny Writ Duty .. .. .	68	0	0			
Bag Bearer .. .. .	42	16	0			
Chaff Wax .. .. .	19	16	8			
Sealer .. .. .	17	14	0			
Clerk in the Public Office .. .. .	300	0	0			
Ten Masters' Junior Clerks (under the above two Acts) .. .. .	1,716	14	4			
Messenger .. .. .	12	12	0			
				44,793	7	2
				£139,439	0	2

RECEIPTS.

	£	s.	d.	£	s.	d.
Fees received in the Masters' Offices .. .. .	36,546	7	4			
.. .. . Registrars' Office .. .. .	16,630	15	0			
.. .. . Report Office .. .. .	8,186	3	11			
.. .. . Affidavit Office .. .. .	5,426	1	8			
.. .. . Examiners' Office .. .. .	1,376	2	8			
Fees received by Gentlemen of the Chamber for Fines and Recoveries .. .. .	16	11	6			
.. .. .	422	6	11			
Proportion of deceased Six Clerks' Fees .. .. .	9	0	0			
Fees received at the Subpena Office .. .. .	125	19	0			
Fees formerly payable to the Lord Chancellor .. .. .	1,509	16	4			
Fees received by Secretary of Lunatics .. .. .	3,296	1	4			
.. .. . Clerk to the Masters in Lunacy .. .. .	3,254	5	2			
.. .. . Taxing Masters .. .. .	38,230	5	2			
.. .. . Clerk of Enrolments .. .. .	6,993	0	9			
.. .. . Record and Writ Clerks .. .. .	22,807	16	4			
Interest Money brought over from the Account of "The Sale of Six Clerks' Office" .. .. .	44	4	0			
				134,874	17	1
Excess of Charges above Fees for the Year ending 24th November 1845 .. .. .				4,564	3	1
				£139,459	0	2

EXAMINATION PRIZES.

To the Editor of the Legal Observer.

SIR,—Understanding that the examiners, last term, had in contemplation awarding some acknowledgment of merit to the students, but not observing anything about it in the Legal Observer, considering the subject may be dropped, I am induced from being acquainted with several students, and hearing their ideas, to respectfully submit them to the examiners.

That if some treatise on the several branches of the law included in the questions stamped with the arms of the institution, was given to those who answered best on each branch, it would, no doubt, be the means of causing great

emulation, and make the student consider himself more upon a footing with the other learned professions, which I have no doubt they would fully appreciate.

ANON.

[The examiners of last term having, in the discharge of their duty, been obliged to postpone the certificates of not less than 13 out of 89 candidates, were, it appears, on the other hand, desirous of noticing the very satisfactory way in which several of the successful candidates had passed their examination; but we understand, that on due consideration, it was not deemed expedient in itself, or consistent with the present regulations to confer any distinctions.—ED.]

## LIST OF SHERIFFS, UNDER-SHERIFFS,

COMPILED BY LEONARD LAIDMAN,

WARRANTS are granted in Town for the Borough of Carmarthen, Carnarvonshire, Radnor-Exeter, Gloucestershire, Gloucester City, Kingston-upon-Hull, Leicestershire, Lancashire, Lincolns, not before named.

Office Hours, in Term, from 11 to 4;

## ENGLAND.

<i>Counties, &amp;c.</i>	<i>Sheriffs.</i>
Bedfordshire . . .	William Stuart, of Watford, Esq. . . . .
Berkshire . . .	William Stephens, of Prospect-hill, Reading, Esq. . . . .
Berwick-upon-Tweed . . .	Captain William Smith, R. N., Ava-lodge, Berwick-upon-Tweed . . . . .
Bristol, City of . . .	Thomas Hill, of Cote-bank, Westbury-upon-Trym, Gloucestershire, Esq. . . . .
Buckinghamshire . . .	Sir William Robert Clayton, of Harleyford-house, Bart. . . . .
Cambridge and Hunts . . .	Sir Charles Wager, of West Wrating, Bart. . . . .
Canterbury, City of . . .	Frederick Freeman Cobb, of the New-road, Canterbury, Esq. . . . .
Cheshire . . .	James Hugh Smith Barry, of Masbury-hall, Esq. . . . .
Chester, City of . . .	John Smith, of Chester, Esq. . . . .
Cinque Ports . . .	His Grace the Duke of Wellington . . . . .
Cornwall . . .	Christopher Henry Thomas Hawkins, of Trewithen, Esq. . . . .
Coventry, City of . . .	Act 5 & 6 Vict. c. 110, s. 10, abolished the Office of Sheriff for this City, and Warrants are now granted by the Sheriff of Warwickshire.
Cumberland . . .	Joseph Pocklington Senhouse, of Barrow-house and Nether-hall, Esq. . . . .
Derbyshire . . .	Sir Robert Edward Wilmot, of Osmaston-hall, near Derby, Bart. . . . .
Devonshire . . .	Sir Walter Palk Carew, of Haccombe, near Newton Abbot, Bart. . . . .
Dorsetshire . . .	Charles Porcher, of Cliffe-house, Esq. . . . .
Durham . . .	Ralph Stephen Pemberton, of Usworth-house, Gateshead, Esq. . . . .
Essex . . .	John Clermont Whiteman, of the Grove, Thoydon Garnon, Epping, Esq. . . . .
Exeter, City of . . .	Joseph Shephard, of Exeter, Esq. . . . .
Gloucestershire . . .	George Bengough, of Newland, and the Ridge, Esq. . . . .
Gloucester, City of . . .	John Join Flux, of Eastgate-street, Gloucester, Esq. . . . .
Hampshire . . .	John Beardmore, of Uplands, Fareham, Esq. . . . .
Herefordshire . . .	Daniel Peploe Peploe, of Garnston, Esq. . . . .
Hertfordshire . . .	Felix Calvert, Hunsdon-house, Hunsdon, near Ware, Esq. . . . .
Huntingdon & Cambridge . . .	Sir Charles Wager, of West Wrating, Bart. . . . .
Kent . . .	William Osmund-Hammond, of St. Alban's Esq. . . . .
Kingston-upon-Hull . . .	Christopher Leake Ringrose, of Fanby, Yorkshire, Esq. . . . .
Lancashire . . .	William Standish Standish, of Duxbury-park, Esq. . . . .
Leicestershire . . .	William Ann Pochin, of Barkby, Esq. . . . .
Lincolnshire . . .	James Banks Stanhope, of Revesby Abbey, Esq. . . . .
Lincoln, City of . . .	Henry Moss, of Lincoln, Esq. . . . .
Litchfield, City of . . .	Joon Allport, of Litchfield, Esq. . . . .
London, City of . . .	William James Chaplin, of No. 1, Adelphi-terrace, London, Esq. . . . .
Middlesex . . .	John Laurie, of Hyde-park-place, Hyde-park, London, Esq. . . . .
Monmouthshire . . .	Thomas Prothero, of Malpas-court, Esq. . . . .
Newcastle-upon-Tyne . . .	Matthew Robert Bigge, of Newcastle-upon-Tyne, Esq. . . . .
Norfolk * . . .	The Hon. Charles Spencer Cowper, of Sandringham-hall . . . . .
Norwich, City of . . .	Jeremiah Colman, of Norwich, Esq. . . . .
Northamptonshire . . .	Allen Allcocke Young, of Grilingsbury, Esq. . . . .

## DEPUTIES, AND AGENTS, FOR 1846.

## UNDER-SHERIFFS' ACCOUNT AGENT.

shire, and all places except Bristol, Canterbury, Cinque Ports, Chester, Derbyshire, Durham, coln City, Monmouthshire, Norwich, Poole, Southampton, York City, and the Welsh Counties,

and in Vacation, from 11 to 3.

## ENGLAND.

*Under-Sheriffs.*

William Day, of St. Neot's, Huntingdonshire, Esq.  
John Jackson Blandy, of Reading, Esq.

Robert Weddell, Berwick-upon-Tweed, Esq.

William Ody Hare, 3, Small-street, Bristol, Esq.  
James James, of Aylesbury, Esq.

Christopher Pemberton, of Cambridge, Esq.

Robert George Chipperfield, of Canterbury, Esq.

Messrs. Hostage and Blake of Northwich

John Finchett Maddock, Town Clerk of Chester, Esq.

Thomas Pain, of Dover, Esq.

John Gilbert Chilcott, of Truro, Esq.

Silas Saul, of Carlisle, Esq.

Francis Jessopp, of Derby, Esq. (A. U. Messrs. Jessopp, Son, & Burnaby, Derby)

Winslow Jones, of Cathedral Yard, Exeter, Esq.

Thomas Coombs, jun., of Dorchester, Esq.

William Emerson Wooler, of North Bailey, Durham, Esq.

Joseph Jessopp, of Waltham Abbey, Esq.

Henry Willcocks Hooper, of Exeter, Esq.

John Burrup, of Berkeley-street, Gloucester, Esq.

Thomas Smith, of Gloucester, Esq.

Charles Seagrim, of Winchester, Esq.

Francis Lewis Bodenham, of High-street, Hereford, Esq.

Philip Longmore, Castle, Hertford, Esq.

Christopher Pemberton, of Cambridge, Esq.

Henry Kingsford, of Canterbury, Esq.

Messrs. Holden & Son, of Hull

Messrs. Gorats and Birchall, of Preston

Charles Smith (firm of Miles and Smith,) of Leicester, Esq.

Richard Clitherow, of Horncastle, Esq. (A. U.

Henry Williams, of Lincoln, Esq.

Richard Mason, Guildhall, Lincoln, Esq.

William Green, of Litchfield, Esq.

{ Francis Thomas Bircham, of No. 15, Bedford Row, London, Esq.

{ David Williams Wire, of St. Swithin's Lane, London, Esq.

Charles Burton Fox, of Newport, Esq. (A. U. Messrs. Prothero, Towgood, and Fox, of Newport)

Robert Leadbitter, of Newcastle-upon-Tyne, Esq.

Lewis Whinacop Jarvis, of Lynn, Esq. (A. U. Messrs. Adam Taylor & Sons, Norwich)

Joseph Colman, of Norwich, Esq.

Henry Lamb, of Kettering, Esq.

*Deputies and Town Agents.*

Messrs. Hale, Boys and Austen, 6, Ely-place.

Messrs. Gregory, Faulkner, Gregory and Skirrow, 1, Bedford row.

Messrs. Meggison, Pringle & Co., 3, King's-road, Bedford-row.

Messrs. Bridges and Mason, 23, Red Lion-square.

William Meyrick, 2, Furnival's-inn.

Messrs. Cole and Son, Adelphi-terrace, Strand.

Thomas Kirk, 10, Seward's-inn, Chancery-lane.

John Froggatt, 16, Clifford's-inn.

John Philpot, jun., 3, Southampton-street, Bloomsbury.

Messrs. Wright and Kingsford, 13, Essex-street, Strand.

Joseph Raw, 5, Furnival's-inn.

Messrs. Capes and Stuart, Field-court, Gray's-inn.

Messrs. Smedley and Rogers, 40, Jermyn-street, St. James's.

George Carew, 9, Lincoln's-inn-fields.

Messrs. Rickards and Walker, 29, Lincoln's-inn-fields.

H. M. Vane, Carlton-chambers, 12, Regent-street.

Messrs. Nelson and Wynn, Gresham-place, Lombard-street.

Messrs. Clipperton and Impey, 17, Bedford-row.

Thomas White, 11, Bedford-row.

Messrs. Jones, Tudway and Eyre, 1, John-street, Bedford Row.

William Braikenridge, Bartlett's-buildings.

Messrs. Overton and Hughes, 25, Old Jewry.

Messrs. Hawkins, Stocker, Bloxam, and Stocker, 2, New Boswell-court.

Messrs. Cole and Son, Adelphi-terrace, Strand.

Messrs. Palmer, France and Palmer, 24, Bedford-row.

Messrs. Hicks and Marris, 5, Gray's-inn-square.

Messrs. Wigglesworth, Ridsdale and Cradlock, 1, Gray's-inn-square.

Messrs. R. M. and C. Baxter, 48, Lincoln's-inn-fields.

Messrs. Taylor & Collisson, 22, Great James-street, Bedford-row.

Messrs. Taylor & Collisson, 28, Great James-street, Bedford-row.

Messrs. Gem, Pooley and Beasley, 1, Lincoln's-inn-fields.

Messrs. James and William Burchell, 24, Red Lion-square.

Secondaries Office, Basinghall-street.

George Hall, 11, New Boswell-court.

Thomas Leadbitter, 7, Staple-inn.

Messrs. Clowes and Wedlake, 10, King's Bench-walk, Temple.

John Mills, 3, Brunswick-place, City-road.

Messrs. Grimaldi, Stables and Burn, Copthall-court.

Northumberland . . .	Charles William Orde, of Nunnykirk, Esq. . . . .
Nottinghamshire . . .	Francis Hall, of Park-hall, Nottinghamshire, Esq. . . . .
Nottingham, Town of . .	Nathan Hurst, jun., of Nottingham, Esq. . . . .
Oxfordshire . . . . .	Mortimer Ricardo, of Kiddington, Esq. . . . .
Poole, Town of . . . . .	Edward Mullett, of Poole, Esq. . . . .
Rutlandshire . . . . .	John Gilson, of Wing, near Uppingham, Esq. . . . .
Shropshire . . . . .	Richard Henry Kinchant, of Park-hall, Oswestry, Esq. . . . .
Somersetshire . . . . .	Richard Meade King, of Pyrland-Hall, Esq. . . . .
Southampton, Town of . .	John Aslatt, of Marland-place, Southampton, Esq. . . . .
Staffordshire . . . . .	John Levett, of Wichnor, near Lichfield, Esq. . . . .
Suffolk . . . . .	Sir Robert Shafto Adair, of Flixton, Bart. . . . .
Surrey . . . . .	Charles M'Niven, of Perrysfield, Oxted, Esq. . . . .
Sussex . . . . .	William Townley Mitford, of Pithill, Esq. . . . .
Warwickshire . . . . .	Charles Thomas Warde, of Clopton-house, Esq. . . . .
Westmoreland . . . . .	The Right Hon. Henry Earl of Thanet . . . . .
Wiltshire . . . . .	The Hon. Jacob Pleydell Bouverie (commonly called Viscount Folkestone), of Longford Castle . . . . .
Worcestershire . . . . .	William Hemming, of Fox Lydiate-house, Esq. . . . .
Worcester, City of . . .	Frederick Thomas Elgie, of Foregate-steet, Worcester, Esq. . . . .
Yorkshire . . . . .	James Walker, of Sandhutton, Esq. . . . .
York, City of . . . . .	George Jennings, of Bootham, York, Esq. . . . .

## NORTH WALES.

Anglesey . . . . .	John Lewis Hampton Lewis, of Henllys, Esq. . . . .
Carnarvonshire . . . . .	Charles Henry Evans, of Bontnewydd, near Carnarvon, Esq. . . . .
Denbighshire . . . . .	Brownlow Wynne Wynne, of Garthwin, near Abergele, Esq. . . . .
Flintshire . . . . .	Samuel Henry Thompson, of Bryncoch, Esq. . . . .
Merionethshire . . . . .	Sir Robert Williams Vaughan, of Nannau, near Dolgelly, Bart. . . . .
Montgomeryshire . . . .	John Foukes, of Carne, Esq. . . . .

## SOUTH WALES.

Breconshire . . . . .	Morgan Morgan, of Bodwiglad, Esq. . . . .
Cardiganhire . . . . .	James Davies, of Frefechan, Aberystwyth, Esq. . . . .
Carmarthen, Borough of . .	David Evans Lewis, Waterloo-terrace, Carmarthen, Esq. . . . .
Carmarthenshire . . . . .	Sir John Mansel, of Llanstephan, Bart. . . . .
Glamorganshire . . . . .	Richard Franklen, of Clemenstone-house, Glamorganshire, Esq. . . . .
Haverfordwest, Town of . .	William Phillips, of Hill-street, Haverfordwest, Esq., to whom all Writs must be sent . . . . .
Pembrokeshire . . . . .	John Harding Harries, of Trevaccon, Esq. . . . .
Radnorshire . . . . .	Thomas Prickard, of Dderw, Rhayader, Esq. . . . .

\* The Hon. Mr. Cowper is at present abroad, but expected to return in the early part of March, Buckworth, of Cockley Cley, Esq., Sheriff; Charles Bonner, of Spalding, Esq., Under-Sheriff; 16, Furnival's Inn, Agents.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

*From 1st November, 1845.*

## Common Law Courts.

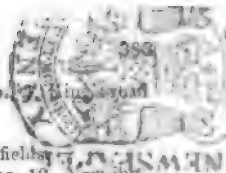
[SEE I. Construction of Statutes, p. 333,

ante; II. Grounds of Action and Principles of the Common Law, p. 358, ante.]

## III. COMMON LAW PLEADINGS.

## AMBIGUITY.

IN trover, the first count was for twenty tons weight of hay; the second count for 100 bushels of barley and twenty tons weight of straw; the



George Brunell, of Morpeth, Esq. . . .	Messrs. Meggison, Pringle, & Co., 7, Bedford-row.
Messrs. Parsons, Benn, and Parsons, of Mansfield, A. U. John Brewster, of Nottingham, Esq. . . .	Charles Deane, 61, Lincoln's-inn-fields.
Christopher Swann, of Nottingham, Esq. . . .	Messrs. Holme, Loftus and Young, 10, New-inn, Strand.
Samuel Cooper, of Henley-upon-Thames, Esq. . . .	Charles Berkeley, 52, Lincoln's-inn-fields.
Henry Mooring Aldridge, of Poole, Esq. . . .	Messrs. Skilbeck and Hall, 19, Southampton-build- ings.
William Gilson, of Uppingham, Esq. . . .	Messrs. Capes and Stuart, 1, Field-court, Gray's- inn.
Richard Jones Croxon, of Oswestry, Esq. (A. U. Joshua John Peele, of Shrewsbury, Esq.) . . .	Henry Hammond, 16, Furnival's-inn.
Edward Coles, of Taunton, Esq. . . .	Messrs. W. and E. Dyne, 61, Lincoln's-inn-fields.
Richard Blanchard, 1, Sussex-place, Southampton, Esq. . . .	Messrs. Davies and Son, 21, Warwick-street, Re- gent-street.
Robert William Hand, of Stafford, Esq. . . .	Messrs. White, Eyre, and White, 11, Bedford row.
Peter Bartholomew Long, of Ipswich, Esq. (A. U. Messrs. Warman, Greene and Smithes, of Bury St. Edmunds') . . .	Messrs. R. M. and C. Baxter, 48, Lincoln's-inn- fields.
William Haydon Smallpiece, of Guildford, Esq. . . .	Messrs. Abbott, Jenkins and Abbott, 8, New-inn, Strand.
John Luttmann, of Petworth, Esq. . . .	Messrs. Palmer, France and Palmer, 24, Bedford- row.
Thomas Heath, of Warwick, Esq. . . .	Samuel John Pittendreich, 14, South-square, Gray's-inn.
John Heelis, of Appleby, Esq. . . .	George Mounsey Grav, 9, Staple-inn.
Coard William Squarey, of Salisbury, Esq. . . .	Messrs. Palmer, France and Palmer, 24, Bedford- row.
William Robeson, of Bromsgrove, Esq. (A. U. Messrs. Gillam and Sons, Worcester) . . .	Messrs. Cardale and Iliffe, 2, Bedford-row.
Herbert George Goldingham, of Foregate, Worces- ter, Esq. . . .	Henry Bedford, 4, Gray's-inn square.
William Gray, of York, Esq. . . .	Messrs. Lowe, 2, Tanfield-court.
John James Gutch, of Coney-street, York, Esq. . . .	None ever appointed.

#### NORTH WALES.

Messrs. Poole and Powell, of Carnarvon . . .	Messrs. Abbott, Jenkins and Abbott, 8, New-inn.
James Vaughan Horne, of Denbigh, Esq. . . .	Messrs. Palmer, France and Palmer, 24, Bedford- row.
Arthur Troughton Roberts, of Mold, Esq. . . .	Messrs. Milne, Parry, Milne and Morris, 2, Har- court-buildings, Temple.
Messrs. Owen and Griffiths, of Dolgelly . . .	Messrs. Gatty and Turner, Red Lion-square.
Joseph Jones, of Welchpool, Esq. . . .	Messrs. Jones and Blaxland, Crosby-square.

#### SOUTH WALES.

Frederick Rowland Roberts, of Aberystwyth, Esq. . . .	Messrs. Hawkins, Stocker, Bloxam and Stocker, 2, New Boswell-court.
George Thomas, jun., Llamas-street, Carmar- then, Esq. . . .	Messrs. Rickards and Walker, 29, Lincoln's-inn- fields.
Phillip Griffith Jones, of Carmarthen, Esq. . . .	Robert Gamlen, 3, Gray's-inn-square.
William Lewis, of Bridgend, Esq. . . .	Isaac Wrentmore, 19, Lincoln's-inn-fields.
No Under-Sheriff or Agent ever appointed.	
William Evans, of Haverfordwest, Esq. . . .	Messrs. Jones, Trinder, Tudway and Eyre, John- street, Bedford-row.
Evan Williams, of Rhayader, Esq. . . .	Messrs. Meredith and Reeve, 8, New-square, Lin- coln's-inn.

when he will be sworn in, until which time the names will stand as follow:—Theophilus Russell  
Messrs. Adam Taylor and Sons, Norwich, acting Under-sheriffs; and Messrs. Temple and Bonnor,

third for 500 bushels of turnips. The defend-  
ant pleaded to the whole declaration, that, before  
and at the several times when, &c., *W. B.* was  
lawfully possessed as of his own property of  
three equal undivided fourth parts of and in the  
goods in the declaration mentioned; that be-  
fore any of the times when, &c., *W. B.*, being  
so possessed thereof, delivered them to Richard

Roe, to be kept by him for the said *W. B.*;  
and that the said Richard Roe, before any of  
the said times when, &c., delivered them to the  
plaintiff; whereupon the defendant, as the  
servant of *W. B.*, took them out of the posses-  
sion of the plaintiff, &c. *quæ sunt eadem.*

Replication to the plea, so far as the same  
relates to divers, to wit, seven tons weight of

the hay, and divers, to wit, thirty bushels of the barley and seven tons weight of the straw, and divers, to wit, 200 bushels of the turnips, portion of the goods and chattels in the declaration mentioned, admitting that the defendant, as the servant of *W. B.*, converted and disposed of the said *last-mentioned* goods and chattels as in the plea alleged, that *W. B.* was not possessed of the said undivided fourth parts as in the plea mentioned; and, as to the plea, so far as it relates to divers, to wit, seven tons weight of the hay, and divers, to wit, thirty bushels of the barley and seven tons weight of the straw, and divers, to wit, 200 bushels of the turnips, other portions of the goods and chattels in the declaration mentioned; that, admitting that *W. B.* was lawfully possessed of and in three undivided fourth parts, &c., of and in the several goods and chattels *last aforesaid*, yet that the defendant of his own wrong, &c., converted and disposed of *said last mentioned goods and chattels*, &c. *Held*, on special demurrer to the replication, that it was bad for ambiguity, it being uncertain whether the "*last-mentioned goods and chattels*" referred to the whole of the goods mentioned in the declaration, or to the goods mentioned in the commencement of the replication.

*Held*, also, that the plea was a good answer to the declaration. *Ashton v. Brevitt*, 14 M. & W. 106.

Cases cited: *Branker v. Molyneux*, 1 M. & G. 710; 1 Scott, N. R. 553; *Morant v. Sign*, 2 M. & W. 95; *Spyer v. Thelwell*, 2 C. M. & R. 692; *Rex v. Wright*, 1 A. & E. 434; 3 Nev. & M. 892; *Ascus v. Sanderson*. Cro. Eliz. 433; *Acraman v. Cooper*, 10 M. & W. 585.

#### AMENDMENT OF RECORD.

*After judgment in a court of error.*—In assumpsit on a memorandum of charter, the declaration contained a special count, and also an *indebitatus* count for demurrage. The jury having found for the plaintiffs with 170*l.* damages, the plaintiffs, after repeated discussions before the judge who tried the cause, elected to enter up the verdict on the first count. The defendant brought a writ of error, and the Court of Exchequer Chamber reversed the judgment, on the ground that no sufficient consideration was disclosed in the first count. Two years after the judgment of reversal was pronounced, the plaintiffs applied to the court for leave to amend the *postea* by entering the verdict on the fourth count instead of the first (contending that the evidence was equally applicable to both,) and to make the judgment-roll conformable to the amended *postea*. *Held*, that the application was too late.

*Quere*, whether this court had power to make such amendment *after judgment* in the court of error. *Jackson v. Galloway*, 1 C. B. 280; S. C. 5, New Cases, 71; 6 Scott, 786; 3 M. & G. 960; 3 Scott, N. R. 753.

Cases cited: *Richardson v. Mellish*, 2 Bing. 229; 3 Bing. 346; 9 J. B. Moore, 435; 11 J. B. Moore, 104; *Scales v. Cheese*, 1 Dowl. & L. 637; *Mellish v. Richardson*, 7 B. & C.

819; 9 Bingh. 125; 2 M. & Scott, 191; 1 Clark & F. 224; *The Bishop of Exeter v. Guiley*, 5 Maon. & Ryl. 457; *Satter v. Shade*, 1 A. & Ellis, 608; 3 N. & M. 717; *Harrison v. King*, 1 B. & Ald. 161; *Rex v. Carlile*, 2 R. & Ad. 971; *Petrie v. Hannay*, 3 T. R. 659; *Doe d. Church v. Perkins*, 3 T. R. 749; *Herrley v. The Mayor of Lyme Regis*, 3 M. & P. 310; 6 Bingh. 100.

#### AYERMENT OF TENDER.

In assumpsit for not accepting a quantity of guano, the declaration alleged that the plaintiffs were ready and willing to deliver the guano to the defendant according to the terms of the contract: *Held*, sufficient, on special demurrer; and that it was not necessary for the plaintiffs to aver a tender or offer to deliver, or that the defendant dispensed with the tender. *Boyd v. Lett*, 1 C. B. 222. See *Granger v. Dacre*, 12 M. & W. 431.

Cases cited: *Isherwood v. Whitmore*, 10 M. & W. 757; 2 Dowl. N. S. 548; 11 M. & W. 347; *Rawson v. Johnson*, 1 East, 203; *Jackson v. Alloway*, 6 M. & G. 942; 7 Scott, N. R. 875; 1 D. & L. 919; *Pickford v. The Grand Junction Railway Company*, 8 M. & W. 372; 9 Dowl. 766; 2 Rail. Ca. 592.

#### BAIL.

In an action of debt by *A.* against *C.*, a surety, on a bond given under 1 & 2 Vict. c. 110, s. 8, conditioned that *B.*, the principal debtor, should pay to *A.* such sum as should be recovered by *A.* against *B.* in any action brought, or thereafter to be brought for the recovery of the debt with costs, or should render himself to the custody of the gaoler of the court, according to the practice of such court, or within such time, and in such manner, as the said court, or any judge thereof should direct, after judgment recovered in such action, *C.* pleaded—first, that *B.* did render himself to the gaoler of the court according to the practice of the court and the condition of the bond; secondly, that *B.* surrendered himself to, and was taken by the sheriff of London under a *ca. sa.* issued by *A.*; thirdly, that *B.* having been taken under a *ca. sa.* at the suit of *A.*, was brought up by *habeas corpus*, and committed to the custody of the marshal, and thereby was prevented from rendering; fourthly, that *B.* rendered himself, pursuant to an order from a judge, by whom he was committed to the custody of the keeper of the Queen's Prison.

*Held*, on motion to set aside the order allowing these pleas, that *C.* might plead the first and fourth pleas, and also either the second or the third; but that he must elect between the second and third. *Hayward v. Bennett*, 6 M. & G. 1025.

#### BILL OF EXCHANGE.

*Issuable pleas.*—In an action by indorser against the acceptors of a bill of exchange, the defendants, who were under terms to plead issuably, pleaded (amongst others) the following pleas:—First, that after acceptance and before indorsement to the plaintiff, the drawer waived the acceptance, and discharged the de

defendants from payment thereof, of which the plaintiff had notice. Secondly, that after the making and accepting of the bill, and before it became due, it was delivered by the defendants to *W.*, the drawer, and that after it was so accepted and delivered, and while *W.* was the holder and payee thereof, and before it became due, *W.* indorsed to *H.*, one of the acceptors, and then delivered it to *H.* with the intention of divesting himself, and thereby he did divest himself of all right, title, &c., in the bill, and of the right of suing thereon, and of indorsing the same again; that it was indorsed to *H.* for a valuable consideration; that *H.* continued to be the holder of the said bill always from the time of the indorsement thereof until it was afterwards delivered by *H.* to the plaintiff; and that at the time when the bill was so delivered to the plaintiff by *H.*, the plaintiff had notice of all the facts. *Held*, that these were issuable pleas. *Steele v. Harmer*, 14 M. & W. 136. See *Richards v. Richards*, 2 B. & Ad. 447; *Stevens v. Thacker, Peake*, 187; *Whately v. Ticker*, 1 Campb. 35; *Freakley v. Fox*, 9 B. & C. 130; 4 Man. & R. 18.

#### CHRISTIAN NAMES.

The omission of the christian names of persons mentioned in pleading (unless it be excused by averment) is ground of special demurrer. *Appelmans v. Blanche*, 14 M. & W. 154.

#### CONSIDERATION.

A declaration in assumpsit stated, that the plaintiff and defendant had been partners in trade, and had dissolved partnership, and that a bill of exchange, drawn by the plaintiff upon, and accepted by *M.*, for 40*l.*, being a debt due from *M.* to the plaintiff and defendant, had been lost by the plaintiff and defendant, with their indorsement in blank thereon; and thereupon, in consideration that the plaintiff delivered to the defendant another bill for 40*l.*, and four promissory notes for 20*l.* each, for his share of the capital of the partnership, the defendant promised the plaintiff to bear the loss of half the amount that might not be paid in liquidation of the last bill; provided, that in case of *M.*'s making any difficulty, the plaintiff should obtain the approval of Messrs. *B. & G.*, the defendant's advocates, to any proceedings against *M.*; and that the defendant would deposit, when required by the plaintiff, 40*l.* in the hands of a third party, in case such deposit should be found necessary to recover the said debt due by *M.* Averment that it became necessary to deposit the 40*l.* for the purpose of recovering the debt due from *M.*, *M.* being ready to pay the debt if the 40*l.* were deposited at the Bank of England, to indemnify him against the payment of the lost bill; and that the bank was ready to receive and hold the money. Breach, that the defendant refused to make such deposit. *Held*, on special demurrer, that the promise of the defendant was an absolute promise to deposit the 40*l.*, if necessary, and was not dependent on the approval of his advocates; and that a sufficient consideration for, and breach of such promise were alleged in the

declaration. *Appelmans v. Blanche*, 14 M. & W. 154.

#### CONSTABLE.

*Small Tenements Act*.—Trespass for breaking and entering the plaintiff's dwelling-house, and removing his goods. Plea, that after the passing of the 1 & 2 Vict. c. 74, C., one of the defendants, as agent of *M.*, made his complaint in writing before justices of the peace acting for the hundred of *R.*, being the district wherein the said dwelling-house, &c., thereafter mentioned, were situate, and then in petty sessions assembled, &c., and thereby said that *M.* let to the plaintiff a tenement, consisting of, &c., being the said dwelling-house, &c., situate, &c., for a term of one year, and so from year to year, under the rent of 4*s.*, and that the tenancy was determined by notice to quit given by C., on behalf of *M.*, the owner of the said tenement, on, &c., and that on, &c., C., as agent and on behalf of *M.*, served on the plaintiff a notice in writing of his intention to apply to recover possession of the said tenement. The plea then set out the notice, which was according to the form given in the schedule of the act; and alleged that complaint having been so made, and proof given to the justices of the holding and determination of the tenancy, with the time and manner thereof, they the said, &c., being two of the justices acting for the district in which the said tenement was situate, duly issued their warrant, directed to the defendants, and all other constables and peace officers acting for the several parishes within the hundred of *R.*, reciting, &c., and thereby authorized and commanded the defendants and other constables and peace officers, or any of them, to enter on the said tenement, and deliver possession thereof to C. as such agent. The plea then justified the breaking and entering the premises, and removing the goods, by virtue of the warrant. *Held*, on demurrer, that the plea was bad, for want of a distinct averment that any of the defendants was a constable or peace officer of the district within which the premises were situate. *Jones v. Chapman*, 14 M. & W. 124. See *Morrell v. Martin*, 3 M. & G. 590, 4 Scott, N. R. 300.

#### COVENANT.

1. Where, in an indenture between *A.* and *B.*, *B.* acknowledges that he owes so much money to *A.*, such acknowledgment may be declared upon as a *covenant* to pay that sum, if an intention to enter into an engagement to pay appear on the face of the deed.

*Secds*, where the acknowledgment appears to have been made solely for a collateral purpose. *Courtney v. Taylor*, 6 M. & G. 851.

Cases cited: *Cooper v. Garbett*, 13 M. & G. 33; *Seddon v. Senate*, 13 East, 63, 74; *Laird v. Pim*, 7 M. & W. 474; *S. C.* per nom. *Laird v. Payne*, 8 Dowl. P. C. 860; *Barfoot v. Fresswell*, 3 Keble, 465; *Bryce v. Carre*, 1 Lev. 47; *Seddon v. Senate*, 13 East, 63; *Saltoun v. Hous-toun*, 1 Bing. 433; 8 J. B. Moore, 546; *Sampson v. Easterly*, 9 B. & C. 505; 4 Mann. & R. 422, *S. C.* in error; 6 Bing. 645; 4 M. & P. 60; *Duke of St. Albans v. Ellis*, 16 East,



352; *Earl of Shrewsbury v. Gould*, 2 B. & Ald. 487.

2. *Semble*, in covenant for non-repair, the declaration should state the term for which the premises were demised. *Turner v. Lamb*, 2 D. & L. 871.

Cases cited: *Thursby v. Plant*, 1 Wms. Saund. 230, b.; *Ashby v. Harries*, 5 Dowl. 742; S. C. 2 M. & W. 673; *Vivian v. Campion*, Salk. 141; 2 Ld. Ray. 1125; *Carvick v. Blagrave*, 1 B. & B. 531; S. C. 4 Moore, 303; *Cooper v. Blick*, 2 Q. B. 915; S. C. 2 G. & D. 295; *Ireland v. Johnson*, 1 Bing. N. C. 162; S. C. 4 M. & Scott, 706; 2 Chit. Plead. 393, 7th Edit.

#### COVERTURE.

*Semble*, That in an action on contract, *coverture* of the defendant is an issuable plea. *Burch v. Leake*, 7 M. & G. 377.

Cases cited: *Staples v. Holdsworth*, 4 N. C. 144; 5 Scott, 432; 6 Dowl. P. C. 196; *Wilkinson v. Page*, 6 M. & G. 1012.

#### DEMURRER.

*Time for argument*.—Where a demurrer is set down for argument on the Monday, the parties have the whole of the preceding Wednesday to deliver the proper books.

A declaration on a promissory note payable more than six years ago averred part payment within 6 years. A plea traversing such averment was held bad on special demurrer. *Hodkins v. Cook*, 2 D. & L. 894. See *Hollis v. Palmer*, 2 Bing. N. C. 713; S. C. 3 Scott, 265.

#### DETINET.

*Lien*.—In detinue for a picture, the court allowed a plea of "lien" to be pleaded with pleas of "non detinet" and "not possessed." *Barnwall v. Williams*, 7 M. & G. 403.

Cases cited: *Mason v. Farnell*, 12 M. & W. 674; 1 Dowl. & L. 376; *Leak v. Loveday*, 5 M. & G. 972; 5 Scott, N. R. 923; 2 Dowl. N. S. 623; *Owen v. Knight*, 4 N. C. 54; 5 Scott, 307; 6 Dowl. P. C. 244; *Butler v. Hobson*, 4 N. C. 290; 5 Scott, 798; *White v. Teal*, 12 Ad. & E. 106; 4 P. & D. 43; *Stirt v. Drungold*, 3 Bulst. 289; *Isack v. Clarke*, 1 Roll. R. 126; 2 Bulst. 306; S. C. Sir F. Moore, 841.

#### EJECTMENT.

*Attornment*.—In an action of debt for use and occupation, the defendant may show, under the general issue, that J. S. had recovered a judgment in ejectment for the premises, and that to avoid being turned out of possession, he had attorned and paid the rent subsequently accruing due to J. S.; but he cannot, with respect to the rent previously due, set up as a defence under this plea, that he has paid it to J. S. *Newport v. Hardy*, 2 D. & L. 921.

Cases cited: *Waddilove v. Barnett*, 1 Bing. N. C. 538; S. C. 2 Scott, 763; 4 Dowl. 347; *Pope v. Biggs*, 9 B. & C. 245; S. C. 4 M. & R. 193; *Hodgson v. Gascoigne*, 5 B. & A. 88.

#### EXECUTOR.

*Plea*.—In an action against an executor on a

check drawn by his testator, the defendant may plead *non assumpsit*. *Rollston v. Dixon*, 2 D. & L. 892. See *Timmis v. Platt*, 2 M. & W. 720; S. C. 5 Dowl. 748.

#### GUARANTEE.

See p. 361, *ante*.

#### INDICTMENT.

*Locus in quo*.—The Court of Queen's Bench refused to quash an indictment for conspiracy, which had been removed into that court, on the ground that the offence was alleged to have been committed "at Gray's Inn, in the county of Middlesex." *Reg. v. Gompertz*, 2 D. and L. 1001.

Cases cited: *Rex v. Harris*, 2 Leach C. C. 800; *Rex v. Thomas*, 3 D. & R. 621; *Rex v. Holland*, 5 T. R. 607.

#### INSOLVENT.

*Plea*.—To an action on a promissory note, the defendant pleaded, that after the 5 & 6 Vict. c. 116, came into operation, and before the 7 & 8 Vict. c. 96, a petition for protection from process was by him duly presented, and a final order for protection and distribution made by a commissioner duly authorised: and that the debts in the declaration were contracted before the filing of the petition. *Held*, bad, on special demurrer. *Fisher v. Gibbon*, 2 D. & L. 869. See *Leaf v. Robson*, 2 D. & L. 646.

#### INTEREST.

To a declaration in debt on a promissory note for 40*l.*, payable on demand, "with lawful interest for the same," (without alleging that any interest was due,) with counts for money lent and money due on an account stated, the defendant pleaded, "as to the said debts in the declaration mentioned, except as to 5*l.*" (which he had paid into court,) payments to a larger amount, which the plaintiff accepted "in full satisfaction and discharge of the said debts, except as aforesaid, and of all damages by the plaintiff sustained by reason of the detention." The replication traversed the acceptance in satisfaction. *Held*, that the interest was part of the debt, and also that it was recoverable as such, upon the pleadings. *Hudson v. Fawcett*, 7 M. & G. 348.

Cases cited: *Gray v. Pindar*, 2 B. & P. 427; *Henry v. Earl*, 8 M. & W. 228; 9 Dowl. P. C. 725; *Watkins v. Morgan*, 6 C. & P. 661; *Dickenson v. Harrison* 4 Price, 282; 1 M. & G. 306, 316, 320, 323; 1 Wms. Saund. 201, n. (1).

#### LEASE.

*Payment*.—To a declaration in debt by A. against B. for 191*l.* 5*s.* due for two years and a-half rent under a demise, by indenture, B. pleaded as to 40*l.* 10*s.*, parcel, &c., that before the making of the indenture, A. conveyed parcel of the premises to C., in fee, who devised the same to D., his wife, and E. and their heirs; that, after the commencement of the suit, D. and E. "gave notice to B. of their title, and required him to pay them such portion of the rent, not paid over to the plaintiff at the time

of the giving the said notice as might, on a just apportionment, be found to be the just proportional part thereof in respect of the said parcel of the demised premises; and *D.* and *E.* then gave notice to, and threatened *B.*, that if he should neglect or refuse forthwith to pay over such proportional part to *D.* and *E.*, they would immediately eject and expel him from the same parcel; that the said sum of 40*l.* 10*s.* was the sum which, upon a just apportionment of the said rent, would be, and was the proportional part of the rent in respect of the said parcel, and was at the time of the notice unpaid to *A.*; that the rent sued for accrued and became due after the death of *C.*; that if *B.* had not paid the 40*l.* 10*s.* to *D.* and *E.*, they would have proceeded to eject and expel the defendant from the said parcel of the demised premises, wherefore *B.*, after the commencement of the suit, necessarily and unavoidably paid them that sum; and that *A.* never had anything in the said parcel of the demised premises, except as appeared in that plea. *Held*, that this was neither a good plea of eviction, the notice being subsequent to the rent becoming due; nor a good plea of payment, inasmuch as the alleged payment was not in satisfaction of any charge upon the land, or of any debt due from *A.* *Boodle v. Cambell*, 7 M. & G. 386.

Cases cited: *Sapsford v. Fletcher*, 4 T. R. 511; *Taylor v. Zamira*, 6 Taunt. 524; *Pope v. Biggs*, 9 B. & C. 245; 4 Man. & Ry. 193; *Roberts v. Snell*, 1 M. & G. 579, 589; *Johnson v. Jones*, 9 Ad. & E. 809; 1 Perr. & Dav. 651.

And see *Ejectment*.

#### MASTER AND SERVANT.

Assumpsit for the wrongful dismissal of a domestic servant without a month's notice or payment of a month's wages. Plea, that the plaintiff requested the defendant to give her leave to absent herself from his service during the night, that he refused such leave, and forbade her from so absentsing herself, and that against his will she nevertheless absented herself for the night and until the following day, whereupon he discharged her. Replication, that when the plaintiff requested the defendant to absent herself from his service, her mother had been seized with a sudden and violent sickness, and was in imminent danger of death, and believing herself likely to die, requested the plaintiff to visit her to see her before her death, whereupon the plaintiff requested the defendant to give her leave to absent herself for that purpose, she not being likely thereby to cause any injury or hindrance to his domestic affairs, and not intending to be thereby guilty of any improper omission or unreasonable delay of her duties; and because the defendant wrongfully and unjustly forbade her from so absentsing herself for the purpose of visiting her mother, &c., she left his house and service, and absented herself for that purpose for the time mentioned in the plea, the same being a reasonable time in that behalf, and she not causing thereby any hindrance to his domestic affairs, as she lawfully might, &c. *Held*, on demurrer, that the

plea was good, as showing a dismissal for disobedience to a lawful order of the master, and that the replication was bad, as shewing no sufficient excuse for such disobedience.—*Turner v. Mason*, 14 M. & W. 112; S. C. 2 D. & L. 898.

Cases cited: *Fillieul v. Armstrong*, 7 A. & E. 557; *Jacquet v. Bower*, 7 Dowl. P. C. 331; *Levison v. Bush*, Lane, 65; *Callo v. Brouncker*, 4 C. & P. 518; *Spain v. Arnott*, 2 Stark. 265; *Amor v. Fearson*, 9 A. & E. 548; 1 P. & D. 398.

#### NON-JOINDER.

To an action of assumpsit for money had and received, the defendant pleaded in abatement, that the promises in the declaration mentioned, were made by him jointly with certain other persons (thirteen in number, naming them) who were still living, &c. Replication, that the said promises were not made by the defendant jointly with the said other persons in the plea mentioned. The particulars of demand stating that the action was brought to recover "cash deposited or received by the defendant as the plaintiff's banker." At the trial, the plaintiff began, and called a witness who proved that she had a banking account on which a balance was due to her in the amount stated in the particulars, with a banking company called the Isle of Man Joint-Stock Bank, which had since become insolvent, and in which the persons mentioned in the plea, and others also, were shareholders. The witness was cross-examined as to the state of the banking account, and not as to the fact of the defendant's being also a shareholder; but the plaintiff gave no affirmative evidence to prove that he was one. *Held*, by *Pollock, C. B.*, and *Platt, B.*, (*Rolfe, B.*, dissentiente), that that fact was sufficiently admitted by the pleadings and proceedings at the trial to entitle the plaintiff to recover. *Crellin v. Calvert*, 14 M. & W. 11.

Cases cited: *Sewell v. Evans*, 4 Q. B. 626; *Roden v. Ryde*, ib.; 3 G. & D. 604; *Passmore v. Dousfield*, 1 Stark. 296; *Russell v. Bell*, 10 M. & W. 349; *Godson v. Smith*, 2 Moore, 157; *Morris v. Lotan*, 1 M. & Rob. 253; *Roby v. Howard*, 2 Stark. 555.

#### NOT GUILTY.

*What is put in issue by "not guilty."*—In case for a fraudulent representation on the sale of a commission business, the declaration alleged that the plaintiff bargained with the defendant to buy of him his interest in a certain lease and certain fixtures, &c., and the goodwill of a certain business, for 700*l.*, and that the defendant by then falsely, fraudulently, and deceitfully pretending and representing to the plaintiff that the amounts received for commission in the course of the business, and the net profits of the trade were of a certain amount, then sold to the plaintiff the said lease, fixtures, &c., and the goodwill of the said business at and for a certain sum, and it then went on to allege that the representation was false, and a consequent damage to the plaintiff. *Held*, that under not guilty the plaintiff was bound to prove a sale (by production of the agreement between the

parties, which appeared to be in writing,) as well as a false and fraudulent representation, and that it was not enough to prove an assignment of the lease, &c.

#### NONSUIT.

Where a defendant applies to the judge for a nonsuit on the ground that the contract declared on is not proved, and the judge declines to nonsuit, but reserves the point, and the jury find for the defendant, it is competent to the defendant to set up the objection taken by him at the trial, in answer to a rule *nisi* for a new trial obtained by the plaintiff on the ground that the verdict is against evidence. *Mummery v. Paul*, 1 C. B. 316.

Cases cited: *Taverner v. Little*, 5 New Cases, 678; 7 Scott, 796; *Mash v. Densham*, 1 M. & Rob. 442; *Spencer v. Dawson*, 1 M. & Rob. 552; *Cotton v. Brown*, 3 Ad. & E. 312; 4 Nev. & Man. 831; *Dobell v. Stevens*, 3 B. & C. 623; 5 D. & R. 490; *Dewar v. Purday*, 3 Ad. & E. 166; 4 N. & M. 633.

#### PATENT.

1. In case for an infringement of a patent for six distinct improvements in an old machine, the defendants were allowed to plead that *two parts* of the invention were not, nor was either of them a new manufacture within the statute of James. But the court refused to allow them to plead that, as to a *part*, one *A. B.* was the first and true inventor, and that before the grant of the patent, *A. B.* and others publicly used and exercised in England a *part* of the said invention. *Bentley v. Keighley*, 6 M. & G. 1039.

Cases cited: *Brunton v. Hawkes*, 4 B. & Ald. 541; *Hill v. Thomson*, 8 Taunt. 375; 2 J. B. Moore, 424; *Kay v. Marshall*, 5 N. Ca. 492; 7 Scott, 548.

2. *Notice of objections.—Amendment.*—In an action for the infringement of a patent, the defendant delivered a notice of objections, one of which stated that the patentee did not by the specification in the declaration mentioned sufficiently describe the nature of the supposed invention; and the other stated that he had not caused any specification sufficiently describing the nature of the supposed invention to be duly enrolled in Chancery. *Held*, that the last objection was not sufficiently precise; and the court ordered an amendment, which was made by inserting the word "other" before specification. *Leaf v. Topham*, 14 M. & W. 146. See *Heath v. Unwin*, 10 M. & W. 684; *Fisher v. Denwick*, 6 Scott, 593; *Jones v. Berger*, 6 Scott, N. R. 210.

3. *Involment of specification.*—A declaration in case for infringement of a patent, set out the proviso for making the letters patent void in case of the non-enrolment of a specification within six months, and averred performance of that condition. Plea, that the patentee "did not particularly describe and ascertain the nature of the alleged invention, and in what manner the same was to be performed," concluding with a verification. *Held*, that performance of the condition of enrolment was properly alleged in the declaration, though it did not appear on

the face of the declaration, directly, or by necessary implication, that the six months allowed for the enrolment had actually expired before action brought. *Held*, also, that the plea improperly concluded with a verification. *Bentley v. Goldthorp*, 1 C. B. 368.

Cases cited: *Muntz v. Foster*, 6 Man. & Gr. 734; 7 Scott, N. R. 471; 1 Dowl. & L. 737; *Millner v. Crowdall*, 1 Show. 338; *Bodenham v. Hill*, 7 M. & W. 274; 8 Dowl. P. C. 862; *Thursby v. Plant*, 1 Wms. Saund. 233 n. (2), and 233, b. n. (d); *Howell v. Richards*, 11 East, 633; *Wynne v. Wynne*, 2 Man. & Gr. 8; 2 Scott, N. R. 278.

#### PAYMENT.

When a declaration in debt on a promissory note gave credit for part payment of the principal and interest: *Held*, that the allegation of part payment was not traversable, and consequently that a plea traversing that allegation was bad. *Hodgins v. Hancock*, 14 M. & W. 120.

Cases cited: *Kenyon v. Wakes*, 2 M. & W. 764; *Hollis v. Palmer*, 2 Bing. N. C. 713; 3 Scott, 265; *Stafford v. Forcer*, 10 Mod. 311; *Bill v. Lake*, *Hetley*, 138; *Sarsfield v. Witherby*, *Carlhow*, 82.

#### REPLICATION.

*De injuria.*—A declaration in *assumpsit* charged the defendant in the first two counts, as the acceptor of two bills of exchange, and in other counts, for money lent, money paid, interest, and money due upon an account stated. The defendant pleaded, as to the first and second counts, and as to 852l. 9s. 6d. parcel of the moneys in the third and subsequent counts mentioned, that the bills were respectively drawn and accepted for and on account of the sums they respectively represented, parcel of the said sum of 852l. 9s. 6d., and for no other consideration; that, after they respectively became due, and before the commencement of the suit, the defendant and one *P.* transferred certain stock of the value of 416l. 17s. 6d., in full satisfaction and discharge of the sum of 416l. 17s. 6d., parcel, &c., and of the causes of action in the declaration, so far as they related to the said sum of 416l. 17s. 6d.; that the defendant gave the plaintiff, and the plaintiff took and received from the defendant three several bills of exchange for 145l. 4s. each; and that the plaintiff accepted and received the stock and the bills in full satisfaction and discharge of the said sum of 852l. 9s. 6d., and of the causes of action in the declaration mentioned, so far as they related thereto. To this plea the plaintiff replied *de injuria*. *Held*, that, inasmuch as the plea set up matter in discharge, and not in excuse, the replication *de injuria* was improper. *Barns v. Price*, 1 C. B. 214.

Cases cited: 1 M. & R. 662; 7 B. & C. 642; 4 Bingh. 549; 1 M. & P. 401; 2 Y. & J. 530; *Purchell v. Salter*, 1 Q. B. 197; 1 Gale & D. 682; 9 Dowl. P. C. 517; S. C. in error, 1 Q. B. 209; 1 Gale & D. 693; *Crogate's case*, 8 Co. Rep. 66, b.; *Whitehead v. Walker*, 1 Dowl. N. S. 600; *Mitchell v. Cragg*, 10 M. & W. 367; 2 Dowl. N. S. 252.

## SETT OFF.

See p. 365, *ante*.

## SHERIFF.

Declaration in case against sheriff, recited a judgment recovered by plaintiff against *B.*, and a *f. fa.* thereon, delivered to defendant; and that goods of *B.* were within defendant's bailiwick, whereof defendant could have levied, of which he had notice: breach, that defendant had not the moneys before, &c., according to the exigency of the writ, nor paid them to plaintiff, nor levied the moneys, and falsely returned that he had seized goods of *B.*, the value whereof was unknown to him, and which remained unsold for want of buyers. Plea, that defendant seized a bed, &c., and divers other goods of *B.*; that plaintiff directed defendant to withdraw from the possession of all the goods, except the beds, &c., whereupon defendant did withdraw from possession of all the goods, except the bed, &c.; that he was unable to find buyers for the bed, &c.; and that the value of the bed, &c., was unknown to him: and the plea justified the breaches accordingly. Replication, traversing the inability to find buyers, and new assigning that the action was brought, not for not levying of the goods from possession of which defendant withdrew, but as well for not levying of the bed, &c., as also because, although there were goods of *B.*, being part of those mentioned in the declaration and other than those alleged in the plea to have been seized, of which defendant could have levied, whereof defendant had notice, yet defendant did not levy of the goods newly assigned and falsely returned as in the declaration mentioned. Plaintiff joined issue on the traverse, and demurred to the new assignment. On argument of the demurrer, judgment for plaintiff for the badness of the plea, as it did not allege that the goods seized were sufficient to satisfy the writ, or that there were no other goods which could be seized. *Pitcher v. King*, 5 Q. B. 758.

Cases cited: *Pitcher v. King*, 9 A. & E. 288; *Drewe v. Lainson*, 11 A. & E. 529; *Rex v. Perrott*, 2 M. & S. 379; *Wright v. Lainson*, 2 M. & W. 739; *Lewis v. Alcock*, 3 M. & W. 188; *Greens v. Jones*, 1 Wms. Saund. 300, note (q), (6 ed.); *Wright v. Lainson*, 2 M. & W. 739; *Wylie v. Birch*, 4 Q. B. 566, 576; *Eenson v. Welby*, 2 Saund. 133; *Heydon v. Thompson*, 1 A. & E. 210; *Wheeler v. Senior*, 7 M. & W. 562; *Stubbs v. Lainson*, 1 M. & W. 728; S. C. *Tyrwh. & G.* 1000.

## SURETY.

See *Bail*.

## TENDER.

In an action upon an agreement, whereby *A.* was to deliver to *B.* weekly, 200 tons of iron-mine, in tram waggons to be provided by *B.*, the declaration alleged that *A.* was ready and willing, and tendered and offered to deliver to *B.* the said quantity weekly, in tram waggon to be provided by *B.*, of which *B.* had notice, but that he refused to take the said iron-mine.

*Held*, that the allegation of tender was immaterial, and not traversable. *Jackson v. Allaway*, 6 M. & G. 942.

Cases cited: *Rawson v. Johnson*, 1 East, 203; *Wilks v. Atkinson*, 6 Taunt. 11; 1 Marsh. 412; *Levy v. Lord Herbert*, 7 Taunt. 314; 1 J. B. Moore, 56; *Waterhouse v. Skinner*, 2 B. & P. 447; *Sir Ralph Bovy's case*, 1 Vent. 217; *Kinnersley v. Barnard*, Cro. Elia. 554; *Constable v. Cloberie*, Palm. 397.

## TRESPASS.

1. In trespass for entering a yard, the defendant was allowed to plead that he entered for the purpose of viewing a mare then in a stable in the yard, which had been recently stolen from him. *Webb v. Beavan*, 6 M. & G. 1055.

[The defendant does not appear to have been under terms to plead issuably. *Wilkinson v. Page*, 6 M. & G. 1012.]

2. To trespass for breaking and entering the plaintiff's dwelling-house, and removing his goods, the defendants pleaded, that after the 1 & 2 Vict. c. 74, C., as agent of *M.* made his complaint in writing before justices acting for the district of *R.*, wherein the premises therein-after mentioned were situate, and stated that *M.* let to the plaintiff a tenement from year to year, under the rent of 4s., that the tenancy was determined by notice to quit, and that C. as such agent, served on the plaintiff a notice of his intention to recover possession of the said tenement, a duplicate of which notice was served on the wife of the plaintiff on the premises, and read over and explained to her. The plea then set out the notice, and alleged that the justices duly issued their warrant, directed to the defendant and all other constables and peace officers acting for the several parishes within the hundred of *R.*, and thereby authorised and commanded the defendants, and said other constables and peace officers, to enter on the said tenement, and deliver possession thereof to C. as such agent. The plea then proceeded to justify the breaking and entering the premises, and removing the goods by virtue of the said warrant. *Held*, that the plea was bad, and that the defendants who acted in obedience to the warrant were not protected by the 24 Geo. 2, c. 44. *Jones v. Chapman*, 2 D. & L. 907; and see *Morrell v. Martin*, 3 M. & G. 590; S. C. 4 Scott N. R. 300.

3. *Leave and licence*.—*A.* let certain premises to *B.* by an agreement which contained the usual clauses for payment of rent and for repairing the premises, and also a clause, that in case of non-payment of the rent, or non-performance of the conditions, it should be lawful for *A.*, without any demand, to enter upon and take possession of the premises, and expel *B.* therefrom without any legal process; and that in case of such entry and of any action being brought for the same, the defendant might plead leave and licence of *B.* to *A.* for the entry or trespass complained of.

In an action of trespass against *C.* for breaking and entering, &c., and assaulting plaintiff *C.* pleaded leave and licence. It ap-

peared that rent being in arrear from *B.* to *A.*, *C.* under a written order from *A.*, had entered and forcibly expelled *B.* The foregoing agreement was given in evidence.

*Held*, that the plea was sustained by the evidence.

*Held*, also, that as the plaintiff had not new-assigned any excess, the assault was merely an aggravation of the principal trespass, and was covered by the plea. *Kavanah v. Gudge*, 7 M. & G. 316.

Cases cited: *Matthew v. Ollerton*, Comberb. 218; *Tuunton v. Costar*, 7 T. R. 431; *Taylor v. Cole*, 3 T. R. 292; 1 H. Bl. 555; *Turner v. Meymott*, 1 Bing. 158; 7 J. B. Moore, 574; *Hilary v. Gay*, 6 C. & P. 284; *Newton v. Harland*, 1 M. & G. 644; 1 Scott, M. R. 474; *Bennett v. Allcott*, 2 T. R. 166; *Attwood v. Taylor*, 1 M. & G. 281 n.; *Hall v. Seabright*, 2 Keble, 561; *Jepson v. Jackson*, 2 Lev. 194.

#### TROVER.

To trover for twenty tons of hay, &c., the defendant pleaded that one *B.* was possessed of three undivided fourth parts in the said goods, and being so possessed, delivered the same to *R.*, to be by him kept for *B.*: that *R.* delivered the goods to the plaintiff; whereupon the defendant, as servant of *B.*, and by his command, seized and took the said goods.

Replication, so far as the plea relates to seven tons of hay, &c., portion of the goods in the declaration mentioned, the plaintiff, admitting that the defendant as the servant of *B.*, converted the said last mentioned goods as in the plea alleged, yet saith that *B.* was not possessed of three undivided fourth parts in the said last mentioned goods, *modo et forma*, &c.

Replication, so far as the plea relates to seven tons of hay, &c., other portion of the goods in the declaration mentioned, the plaintiff, admitting that *B.* was possessed of three undivided fourth parts in the goods and chattels last aforesaid; yet saith that defendant, of his own wrong, &c., converted the said last mentioned goods. On special demurrer to the replications: *Held*, 1st, that the plea was good; 2ndly, that the replications were bad, inasmuch as the words "last mentioned goods" referred to all the goods in the declaration. *Aston v. Brevitt*, 2 D. & L. 903.

Cases cited: *Branker v. Molyneux*, 1 M. & G. 710; S. C. 1 Scott, N. R. 553; *Morant v. Sign*, 2 M. & W. 95; S. C. 5 Dowl. 319; *Ascue v. Sanderson*, Cro. Eliz. 433; *Whitmore v. Greene*, 15 M. & W. 104; S. C. 2 D. & L. 174.

#### VENIRE DE NOVO.

See *Conspiracy*, p. 359, ante.

#### WAY (RIGHT OF.)

In a declaration in trespass *quare clausum fregit*, the first count charges a trespass in "a certain close called the *Church Meadow*, and a certain other close called the *Garden*." The second charges a trespass in the same closes, "in other parts thereof." The defendant pleads a public right of way over the closes in the declaration mentioned. Upon proof of one public right of way over these two closes, the defend-

ant is entitled to the verdict upon an issue taken on the right of way pleaded. *Wood v. Wedgewood*, 1 C. B. 273. See *Webber v. Sparkes*, 10 M. & W. 485; *Ellison v. Isles*, 11 Ad. & Ellis, 665; 3 P. & D. 391.

[The Digest of Cases on Evidence, and (if there be sufficient space) on Practice, will be given in the next number. The Decisions on Arbitrations, Costs, and Attorneys, will close the series.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

#### DATE OF ORDER.—AFFIDAVIT.

*Where a petition stands over for production of further evidence, the court will not allow the order to be dated on the day of the first hearing.*

A PETITION was presented in this case for the payment to the petitioner of certain dividends, ordered to be paid by a previous order. On the hearing of the petition, the court required the production of an affidavit to prove the death of a party residing in Scotland. That affidavit had since been obtained, and

*Mr. Fleming* now asked for an order on the petition, and as a further dividend had accrued since the former hearing, he also asked, that the order might be dated on the day of the former hearing, so that it might include that dividend; but

The Master of the Rolls said he could not allow an order to be dated before the filing of an affidavit on which it was founded; but the order might be made so as to include in express terms the dividend which had accrued.

*Wing v. Wing*. Feb. 12, 1846.

### Vice-Chancellor of England.

EVIDENCE.—CERTIFICATE OF DISTRICT REGISTRATION.

*A certificate of burial under the hand of a district registrar, duly certified, according to 6 & 7 W. 4, c. 86, is evidence of such burial.*

ON the opening a petition in this case, a question was submitted to the court, as to whether the certificate of a burial under the hand of a district registrar, who made his entries only from information communicated to him, could be received as evidence of the burial.

*Mr. Chapman*, for the petition, said, he believed the evidence had been objected to in another branch of the court.

\* See *Hislop v. Wykeham*, 30 Leg. Obs. 224.

The Vice-Chancellor said, that as the act made such certificates evidence, he considered the certificate in question, if made according to the terms of the act, sufficient.

*Traill v. Kibblewhite.* Feb. 13, 1846.

### Vice-Chancellor Wigram.

**PRACTICE.—DELAY.—DISMISSAL OF BILL.—EXAMINATION OF WITNESSES.—ORDERS OF 1828, 1831, AND 1845.**

*Where it appeared that in Jan. 1844, a subpoena to rejoin had been served, and also a commission to examine witnesses in this country had been ordered; that in May of the same year, a commission for the examination of witnesses abroad had been ordered, but that no step had been taken since; the court, upon motion and cross motion, in December 1845, first to dismiss by the defendant, and secondly by the plaintiff, for a commission—refused the former, and granted the latter, upon the terms that publication should pass on, or before, the 31st of January 1846.*

*The orders of April 1828, Nov. 1831, and May 1845, are inapplicable to a case under the above circumstances.*

In this case a motion was made by Mr. Rolt, on behalf of the defendant to dismiss the bill, and a cross motion was made by Mr. Bigg, on behalf of the plaintiff, for a commission to examine witnesses in the country. Both motions came before the court on this day, under the following circumstances:—The answer had been put in, and the replication filed, when, in the month of January 1844, a subpoena to rejoin was served, and an order was obtained for a commission to examine witnesses in England. In the month of May in the same year, an order was obtained for a commission to examine witnesses abroad. No further step had been taken in the cause.

Dec. 22. Sir J. Wigram, V. C., having taken time to consider his judgment, said, the service of the subpoena to rejoin put the cause at issue between the parties, and the defendant was at liberty, according to the old practice, to force the plaintiff on, by serving him with rules to pass publication. According to that practice the defendant could not have moved to dismiss. The orders of 1828, 1831, and 1845, had no application. He must therefore refuse the motion for dismissal. As to the cross motion, it was entirely discretionary. Both parties had remained dormant, but he would make the order for the commission, the plaintiff undertaking that publication should pass on or before the 31st of January next.

*Prentice v. Phillips.* Lincoln's Inn, Dec. 22, 1845.

### Queen's Bench.

(Before the Four Judges.)

**PRACTICE.—DEFECTIVE AFFIDAVITS.**

*Where a rule to discharge a defendant out of custody was discharged, on the ground of*

*the incompleteness of the affidavits, the court will not entertain a fresh application on affidavits supplying the former defects.*

THE defendant had been arrested under a writ of *ca. sa.*, and a rule *nisi* had been obtained for the plaintiff to show cause why the defendant should not be discharged out of custody. A former rule to the same effect was obtained last Michaelmas Term, but discharged on the ground, that the affidavit was defective in not giving a proper description of the defendant.

Mr. Heaton showed cause, and contended, that the court would not entertain a second application with amended materials on the same subject. The rule seems to be laid down by the court in *Regina v. The Manchester and Leeds Railway Company*,<sup>a</sup> and in *Rex v. Orde*, in a note to that case, that when a party applying to the court fails from the incompleteness of his affidavits, he will not be permitted to make a fresh application on the same subject on affidavits supplying the former defect. The affidavits in support of the present motion do not allege any fresh facts that have occurred since the former rule was discharged.

Mr. Pearson, in support of the rule.

The former rule was discharged on a technical objection to the description of the defendant in the affidavits. The facts on which the application is made have never been brought before the court, and when the liberty of the subject is involved, the court will be unwilling to extend a strict rule of practice. The defendant is a native of Scotland, and the affidavits state additional facts in explanation of the law of Scotland.

Lord Denman, C. J. We must adhere to the general practice of the court—this rule will therefore be discharged.

Rule discharged with costs.

*Martin v. Dore.* Q. B., Hilary Term, 1846.

**PRACTICE.—WARRANT OF ATTORNEY.—AFFIDAVIT.**

*An application to set aside a warrant of attorney, on the ground of its not having been duly attested in compliance with the stat. 1 & 2 Vict. c. 110, where there is reason to suppose that the defendant is resident abroad, can only be made by the party himself, or by an attorney employed and authorised by him for that purpose.*

A RULE *nisi* had been obtained, calling on the plaintiff to show cause why a warrant of attorney given and executed by the defendant should not be set aside, on the ground that it was not attested by an attorney nominated by the party executing it, as required by the 1 & 2 Vict. c. 110, s. 9. It appeared from the warrant of attorney that when it was given the defendant was living abroad in Belgium. It appeared from the affidavits that the application was made by — attorney for the defendant.

<sup>a</sup> 8 Adol. & Ellis, 413.

Mr. *Humfrey* showed cause, and contended, on the authority of *Lewis v. Lord Tankerville*,<sup>b</sup> that it should appear that the application was made by the defendant himself, or by some attorney employed by him for that purpose. Lord Abinger, C. B., there says—"There should have been either an affidavit made by Lord Tankerville himself, or one stating an authority from him to make the application, so as to show that it was made by a party acting as attorney for him in the particular transaction." The affidavits here merely state that the person making the application is the attorney for the defendant, which is insufficient.

Sir F. Kelly, Solicitor-General, in support of the rule. In the case cited of *Lewis v. Lord Tankerville*, it appeared that the defendant had been for some time resident abroad, and the judgment there given by the Court of Exchequer must be taken with reference to the state of facts which then existed. Here there is nothing to show that the defendant was resident abroad at the time this application was made. Since he gave the warrant of attorney he has become a peer of the realm, and the presumption would be that he was living in England. The authority of the attorney making the application sufficiently appears, for it may very well be inferred that an attorney who has a general authority to act for another, has power to do so in a particular instance.

Lord Denman, C. J. I think the rule of practice established in the case cited from the Exchequer is applicable in the present instance. This rule, therefore, will be discharged.

*Patteson, Williams, and Wightman, J.s.*, concurred.

Rule discharged without costs.

*Hume v. Lord Wellesley.* Hilary Term, 1846.

#### Queen's Bench Practice Court.

#### SECURITY FOR COSTS.—WHEN NOT REQUIRED.

*A plaintiff will not be required to find security for costs upon an affidavit stating that he is in destitute circumstances, that he cannot be found, and that he has disavowed any connection with the action.*

*Lush* moved for a rule calling upon the plaintiff to give security for costs, upon an affidavit stating that the present defendant had, in the course of last year, brought an action against the plaintiff and recovered 28*l.* 10*s.* 6*d.* for debt and costs; that execution had issued for the amount, but that, upon levy, the sheriff had only been able to raise about 12*l.*, of which sum (after deducting rent due to the landlord and sheriff's fees) the now defendant had received not more than 3*l.* It was further stated that the present plaintiff had left his residence, and was not to be found; and that when he was last seen he stated that he knew nothing about the action, and that it was carried on entirely by the attorney.

*Williams, J.* This case falls short of what is required by the parties; the plaintiff is not shown to be out of the country, and the case is altogether different from those in which a party has lost all his property, and some one else, as an assignee, has been substituted, by an authentic act, for the nominal plaintiff.

Rule refused.

*Armitage v. Grafton.* Hilary Term, Jan. 16, 1846.

#### EJECTMENT FOR SCHOOL HOUSE.—SERVICE.

*In ejectment for a school house in which no one resides, service of the declaration upon a person who keeps the key, and on the schoolmaster, upon the premises, is not sufficient for a rule nisi for judgment against the casual ejector.*

*Carrington* moved for a rule nisi for judgment against the casual ejector, upon an affidavit stating, that the action was brought to recover a school house in which no one resided, and that the declaration had been served on a servant who had charge of the key, as well as on the schoolmaster, upon the premises. He submitted that this was sufficient for a rule nisi.

*Williams, J.* You should have served the declaration upon the person to whom the premises belong; the parties already served are as remote from the description of "tenants" as well can be.

Rule refused.

*Doe d. King v. Roe.* Hilary Term, Jan. 4, 1846.

#### Common Pleas.

#### WARRANT OF ATTORNEY.—JUDGMENT TO BE ENTERED UP JOINTLY, AND NOT SEVERALLY.

*Where a warrant of attorney, executed by two persons, authorizes the receiving of "a declaration," and the entering up of "a judgment" in "an action," and also the execution of "a good and sufficient release," one joint judgment only can be entered up thereon, and this, notwithstanding the authority so given, is expressed to be "for us and each of us."*

*Dowling, Serj.*, had, on a former day, obtained a rule nisi to enter up judgment against one defendant alone, on a warrant of attorney executed by both the defendants. The terms of the authority given to the attorneys therein named, were "to appear for us and each of us, &c., and to receive a declaration for us and each of us, in an action of debt for the sum of 130*l.*, &c., and thereupon to confess the same action, or else to suffer a judgment, &c., to pass against us in the same action, and to be forthwith entered up against us and each of us, of record, &c., and to execute a good and sufficient release," &c.

<sup>b</sup> 9 Mee. & Wel. 109.

*Byles*, Serjeant, now showed cause. The question is, whether the instrument in question gave authority to enter up, not one, but three distinct judgments, and it is submitted that the words "a declaration," "an action," "a judgment," "a release," impart an authority to enter up but one joint judgment. *King v. Hoare*, 13 M. & W. 505; *Gee v. Lane*, 15 East, 592. The words "us and each of us" can only be taken as having a several meaning when applied to the entering an appearance. Had it been or each of us, the case would be different. The case of *Raw v. Alderson*, 7 Taunt. 454, though having no material bearing on the question, may be quoted to show that on a joint warrant of attorney a judgment against one cannot be entered up.

*Dowling*, Serjeant, contra. The words "and each of us" have some meaning, and what other can be given to them than that they confer a several authority? The word "each" must be construed to import severance, on the authority of *Kew v. Rouse*, 1 Vern. 353; *Swift v. Gregson*, 1 T. R. 432; *Brownsvord v. Edwards*, 2 Ves. sen. 243.

*Tindal*, C. J. The question is, what is the proper meaning to be given to the words "and each of us?" Now, when I look at that part of the instrument which authorizes the entering up of judgment, I find the words are, "suffer a judgment to pass against us in the same action;" thus referring to one judgment and one action. It then goes on to say—"to execute a good and sufficient release;" contemplating, on the whole, an authority to enter up but one joint judgment against both the parties.

The rest of the court concurred.

Rule discharged.

*Dalrymple v. Dawes and another*. Hilary Term, 1846.

### Exchequer.

#### AWARD.—INFANT.—COSTS.

*An action of covenant on an apprentice deed having come on for trial, was referred, together with two other actions, in one of which the infant apprentice sued by his next friend; the costs of the cause to abide the event; and the costs of the reference and award to be in the discretion of the arbitrator. The arbitrator awarded that the verdict in the cause should be entered for the defendant, and that the infant should pay the costs of the reference. Held, that the award was good.*

AN action of covenant on an apprentice deed having come on for trial; the cause, with two other actions, in one of which the infant apprentice sued by his next friend, were referred to arbitration, the costs of the cause to abide the event, and the costs of the reference and of the award to be in the discretion of the arbitrator, who was to certify to whom and by whom the same were to be paid. The arbitrator awarded, that the verdict in the cause should

be entered for the defendant, that the two actions should be no further prosecuted, and that the infant should pay the costs of the reference. A rule nisi had been obtained to set aside the award, on the ground, that arbitrator had exceeded his authority, in ordering the infant to pay the costs of the reference, and also, that the award was not final, inasmuch as the costs of the reference were ordered to be paid by a person who was no party to the cause.

*Lush* showed cause. The arbitrator had power to order the costs to be paid by any one party to the reference. A submission to arbitration by an infant is voidable only, and unless he comes when he is of full age to set it aside, the court will not interfere. If it is said, that the infant is no party to the reference, then he has no right to make this application, if he is a party, he was subject to the control of the arbitrator. The infant, who had a common interest in all the suits, gave the arbitrator power to say by whom the costs were to be paid.

*Humfrey*, in support of the rule. The submission must receive a reasonable construction. When it is said, that the costs of the reference are to be in the discretion of the arbitrator, it means, that he is to award a portion to be paid by each person in respect of the particular action to which he is a party. It is the same as if the three causes had been separately referred. [*Pollock*, C. B. If several cases were referred, and a person, not a party to any one of them, came in by rule of court and made himself a party to the reference, why should not the arbitrator direct him to pay the costs of the reference?] The intention was to apportion the costs, nine-tenths of them might have been occasioned by the first cause to which the infant was no party, and therefore the arbitrator should have divided them accordingly. At all events, the arbitrator has exceeded his authority in ordering an infant to pay costs, inasmuch as the award cannot be enforced against him, for he may avoid it any time. It is the same as if the arbitrator had ordered any third person to pay them. [*Rolfe*, B. In that case the award would be bad on the face of it: it is not so here.]

*Pollock*, C. B. I do not think that we ought to interfere to set aside the award: it is in every respect right, and if we thought otherwise, we should send it back to the arbitrator to amend it.

*Alderson* and *Rolfe*, B.s, concurred.

Rule discharged.

*Proudfoot v. Boile*. Hilary Term, 27th Jan. 1846.

### LIABILITY OF ATTORNEYS FOR THE MILITIA.

WE have received several letters inquiring whether attorneys and solicitors are liable to be drawn for the militia. We regret to say that there is no doubt they are so liable according to the existing statutes,



30 Geo. 2, and 2 Geo. 3, c. 20; and the following judgment of Mr. Justice Blackstone in *Gerard's* case, reported 2 W. Blac. 1123, will show the reason of their not being exempted:—

“The true and solid distinction upon which I found my opinion is, that this is not a *personal* service, because it may, at the option of the party drawn, be commuted for a certain sum of money (10*l*.) which sum is to be laid out (by sect. 93) in providing a substitute for the defaulter, who, by payment of the money, stands totally discharged for three years. He has therefore three options allowed him; to serve personally; to find a substitute; or to pay 10*l*. This is the *maximum* of his charge; for though in times of distress and necessity the current price of a substitute should be 50*l*., the person drawn may still be excused for 10*l*. It is therefore not a penalty (as has been urged) for the neglect of finding a substitute, for it may be less than the expense of hiring one; but it is clearly a commutation. This distinguishes the case most materially from that of the trained bands of London, and the ancient commissions of array, where, if the party did not, or was not permitted to find a deputy, he was obliged to serve in person, under an unlimited penalty, sometimes of imprisonment, sometimes of universal forfeiture. The Quaker, by his scruples, is incapacitated from either serving or finding a substitute. The magistrate is therefore to provide a substitute for him at the current market price to be levied on his goods and chattels, be it 5*l*. or 50*l*. Whereas, the attorney, not choosing to serve, may either provide his own substitute, if he can get him cheaper, or else pay the magistrate 10*l*. to provide one for him, and for that sum is totally discharged. This is, therefore, ultimately and in substance a charge upon *property* and not upon the *person*; since the only possible case in which a man can be personally compelled to serve, is that of extreme poverty, or not being able to raise 10*l*. A man in such a case is unfit to be an attorney, and not entitled to the protection of the court.”

#### LEGAL OBITUARY.

1846, Jan. 28.—At Halifax, Nova Scotia, the Hon. S. G. W. Archbold, LL. D., Master of the Rolls and Judge of the Admiralty in that colony, aged 67.

31.—Richard James Hitchcock, Esq., of Davies Street, Berkeley Square, Solicitor, aged 36.

Feb. 2.—Thomas Dyson, Bedford Row, Solicitor.

13.—Thomas George Walter, of Essex Court, Temple, Solicitor, aged 36.

16.—Thomas Perkins, of Chelmsford, Solicitor.

19.—Thomas Wortham, of Royston, Solicitor.

#### LAW PROMOTIONS AND APPOINTMENTS.

*With dates when Gazetted.*

THE Queen has been pleased to constitute and appoint the Right Honourable Thomas Berry Cusaack Smith, her Majesty's Attorney-General in Ireland, to be Keeper or Master of the Rolls and Records of the Court of Chancery, in that part of the United Kingdom called Ireland. Jan. 27.

Her Majesty has been pleased to appoint Clarence Thomas Wyld, Esq., to be Clerk of the Peace at Swellendam, in the Settlement of the Cape of Good Hope. Feb. 13.

Her Majesty has further been pleased to appoint Walter Harding, Esq., to be Crown Prosecutor for the District of Natal, in South Africa. Feb. 13.

#### PERPETUAL COMMISSIONERS.

APPOINTED UNDER THE FINES AND RECOVERIES ACT.

*From 1st Jan. to 20th Feb., 1846, with dates when Gazetted.*

Charles Amplett, of Birmingham, for Warwickshire, Staffordshire, and Worcestershire. Jan. 16.

Joseph Arrowsmith, of Thirsk, for the North Riding of the County of York. Jan. 13.

George Morris Barker, of Birmingham, for Warwickshire, Staffordshire, and Worcestershire. Jan. 9.

John Richard Bloxham, of Birmingham, for Warwickshire, Staffordshire, and Worcestershire. Jan. 16.

Hugh Bruce Campbell, of Nottingham, for Nottinghamshire. Jan. 13.

Alfred Cox, of Chipping Sodbury, for Gloucestershire. Jan. 13.

Thomas Yarrall Johnson Dally, of Arundel, for Sussex. Jan. 2.

John Edmunds, of Plymouth, for Devonshire. Jan. 16.

James Eldridge, of Carisbrooke, for Hampshire. Jan. 13.

George Harrison Gardner, of Bowness, for Westmoreland, Lancashire, and Cumberland. Jan. 9.

Joseph Hall, of Keswick, for Cumberland. Jan. 16.

Alfred Catchmayd Hooper, of Worcester, for the City and County of Worcester. Jan. 16.

Edward Bryan Jones, of Newtown, for Montgomeryshire, Radnorshire, and Shropshire. Feb. 20.

Thomas Llewellyn, of Tunstal, for Staffordshire. Jan. 30.

William Marshall, of Plymouth, for Devonshire. Jan. 13.

John Price, of Buntingford, for Hertfordshire. Jan. 27.

William Rees, of Haverfordwest for Pembrokeshire. Jan. 23.

John Ashmore Smith, of Hinckley, for Leicestershire. Jan. 6.

Thomas Thompson, of Sunderland, for the County of Durham. Jan. 6.  
Gerrase William Wilders, of Bowen, for Kesteven and Holland. Jan. 6.  
James Winter, of Norwich, for Norwich and Norfolk. Jan. 2.  
John Joseph Wise, of Aashbourne, for Derbyshire. Jan. 30.

### MASTERS EXTRAORDINARY IN CHANCERY.

*From Jan. 23rd to Feb. 20th, 1846, both inclusive, with dates when gazetted.*

Amphlett, Thomas, Sutton Coldfield. Feb. 6.  
Bulmer, Charles, Leeds. Feb. 17.  
Gill, Thomas Husbaud, Devonport. Feb. 3.  
Howell, David, Machynlleth. Feb. 20.  
Knight, William, Tamworth. Feb. 10.  
Nicks, Thomas, Warwick. Feb. 10.  
Philcox, James, jun., Burnmarsh. Feb. 6.  
Phillips, William, Helmsley. Jan. 30.  
Stoccombe, William, Reading. Feb. 17.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Jan. 23rd to Feb. 20th, 1846, both inclusive, with dates when gazetted.*

Bennett, Robert, and Joshua Dineley, Attorneys and Solicitors. Feb. 17.  
Cox, John, Charles Reynolds Williams, and Edward Lewton Cox, Attorneys, Solicitors, and Conveyancers, Lincoln's-Inn-Fields. Jan. 27.  
Finch, William, and John Jones, Attorneys and Solicitors, Worcester. Jan. 27.  
Forbes, David Erskine, and William Rd. Drake, Attorneys and Solicitors, 8, Warrford Court. Feb. 3.  
Galloway, John Hewitt, and Edward Cleathing Bell, Attorneys, Kingston-upon-Hull. Feb. 10.  
Greaves, Charles Lemon, and Thomas Crabbe, Attorneys and Solicitors, Uttoxeter. Jan. 23.  
Kine, James, and Thomas Martin, Attorneys and Solicitors, 19, Gracechurch Street. Feb. 20.  
Owens, John, and N. W. Greene, Attorneys and Solicitors, Newtown. Jan. 30.  
Phillipotts, Thomas Griffin, and John Phillipotts, Solicitors, Newport, Monmouth. Jan. 30.  
Richards, John, jun., and Thomas Rogers, jun., Attorneys and Solicitors, Reading. Feb. 10.  
Whittington, John, and Charles Castle, Attorneys, Solicitors, and Conveyancers, Bristol. Feb. 17.

### BANKRUPTCY DIVIDENDS DECLARED.

*From Dec. 30th, 1845, to 30th Jan. 30, 1846, both inclusive.*

[Concluded from p. 372, ante.]

Onions, W. M., West Bromwich, Ironfounder. Final div. 7½d.

Palmer, T., New Road, Soap Maker. Div. 2s. 1d.  
Parslow, C., 66, Blackman Street, Southwark, Tailor. Div. 9d.  
Patterson, T., and J. Codling, Sheriff Hill, Durham, Earthenware Manufacturers. Final div. on separate estate of J. Patterson, 20s.  
Pearson, J., Newcastle-upon-Tyne, Wool Stapler, Div. 1s. 3d.

Plowman, J. Div. 5s. 9d.  
Poynter, W., Upper Holloway, and 34, St. Paul's Church Yard, Warehousemen. Div. 1½d.  
Raleigh, J. T., S. Goode, and W. Holland, Manchester, Merchants. Div. 9½d.  
Rawe, W. H., North Street, Portsea, Leather Seller. Div. 10s. 4½d.  
Robson, T., Liverpool, Soap Manufacturer. Div. 10½d.  
Scholfield, J., Greenacre's Moor, near Oldham, Grocer. Div. 2½d.  
Shaw, T., Southampton, Wine Merchant. Div. 3d.  
Shaw, W., Stafford, Sadler. Div. 3s. 7d.  
Taylor, T. D., 38, Brook Street, Holborn, Oilman. Div. 3s. 6d.

Tensin, J., Farringdon, Innkeeper. Div. 5s.  
Timmis, C., Darlaston Green, Stafford, Flint Grinder. Div. 2s. 1d.  
Turner, W., Manchester, Cabinet Maker. Div. 3s. 7d.  
Vardy, J. E., 108, High Street, Portsmouth, Draper. Div. 2s. 4d.  
Walker, H. D., Eaton Socon, Bedford, Innkeeper. Div. 10s.  
Warburton, H., Harpurley, Manchester, Builder. Div. 2½d.  
Warr, R., Beaminster, Dorset, Auctioneer. Div. 7s. 6d.  
Wilson, J., 111, Jermyn Street, Boot Maker. Div. 2s.  
Wood, T., Little Queen Street, Wine Merchant. Div. 2s. 8d.  
Wetmore, T. H., Broad Street, Worcester, Grocer. Final div. 6s. 4½d.  
Wright, A., Kettering, Grocer. Div. 3s.  
Wright, T., jun., Newcastle-upon-Tyne, Ship-Owner. Final div. 1½d.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

#### House of Lords.

#### NEW BILLS.

General Registration of Deeds.—For 2nd reading. Lord Campbell.  
Game Law Amendment.—In Committee. See the bill, p. 354, *ante*. Lord Dacre.  
Duties of Constables, &c.—In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.  
Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor.

Administration of Criminal Justice. See the bill, p. 377 *ante*. Lord Denman.

### House of Commons.

#### NEW BILLS.

Roman Catholics Relief.—For 2nd reading. Mr. Watson.

Small Debt Courts :

Somerset,  
Northampton,  
Birkenhead,  
St. Austell.

#### CHANCERY RETURNS.

ON the motion of Mr. Watson, copies have been ordered "of all claims made by the Masters in Chancery, and of the registrars, and of the clerks of the registrars, and of the clerks to the entering registrars, and of others, to the Lords of the Treasury, for compensation under the 48th section of the act 3 & 4 Vict. c. 94, intituled, 'An Act for the Regulation of the Process and Practice of certain Officers of the High Court of Chancery in England,' and of the warrant or warrants under the hands of the said Lords of the Treasury, founded upon any of such claims, and of any report or reports of the commissioners appointed by them under the Acts 11 Geo. 4, and 1 Will. 4, c. 58, upon which such warrants are founded.

"Copy of the Report of the Commissioners appointed by the Lords of the Treasury, under the acts 11 Geo. 4, and 1 Will. 4, c. 58, upon the claims of the side clerks of the Court of Exchequer, for compensation under that act, and a copy of the schedule of the fees to which such side clerks were by the said commissioners found and declared to be entitled.

"Return of the respective ages of the persons entitled to compensation under the act 5 & 6 Vict. c. 103, and the names of the sworn clerks to whom they were articulated, and the dates of their articles respectively to such sworn clerks, and the dates of their several admissions to seats as sworn clerks or waiting clerks; and a return of the sums paid by each of the said late sworn clerks entitled to compensation for the purchase of any business of a sworn clerk; stating the sums so paid by each person, and the person to whom paid, and the time or times when paid.

"Return of the number of attendable warrants granted by each of the taxing masters for the taxation of costs each day, within the first, second, and third years of his appointment; distinguishing the warrants to justify attendances, and the number of bills of costs, and the amount and rate of the per centage on the taxation thereof paid thereon during each of those several years, and the sums received by him for warrants granted, and for copies of bills of costs, and for reports or certificates or otherwise during each of these periods.

"Return of the total amount of the sums received by each of the taxing masters of the Court of Chancery (paid out of the Sutors' Fee Fund,) both for salary and compensation, since the passing of the act 5 & 6 Vict. c. 103, distinguishing the sums paid to each person, and the names of the persons.

"Copy of the Report of Sir Giffin Wilson, one of the Masters of the High Court of Chancery in England, dated the 3rd of Dec. 1842, made in the matter of the sutors of that court, and ascertaining the costs and charges incurred in preparing, procuring, and passing the act 5 & 6 Vict. c. 103, for abolishing certain offices of that court, and also a copy of the state of the facts laid before the said master on the part of the said sutors, and referred to in his said report."

### THE EDITOR'S LETTER BOX.

WE apprehend it is too clear to admit of a doubt that attorneys and solicitors are not exempt from being drawn for the militia. They are not obliged *personally* to serve, but if drawn, may either find a substitute at any price they can, or pay 10*l*. Their privilege protects them from the personal service of offices, but the liability in question is in the nature of a charge on *property*, to which, in common with others, they are subjected; see 2 Geo. 3, c. 20, and 2 W. Blac. p. 1123. The burden under which they labour of the poll tax or certificate duty, ought to relieve them from this militia impost. We cannot see, if lawyers are to be peculiarly taxed, why the clergy and the faculty should be exempted. See p. 393, *ante*.

It is very gratifying to find that our recent extension of the plan and dimensions of the Legal Observer have been cordially appreciated. No doubt "the work is now the most useful of its class." We shall not fail to continue our exertions.

Some copies yet remain of the Legal Almanac and Diary, containing several useful lists, and general information, not comprised in the former editions.

C. D. calls the attention of his brother practitioners to the case of *Reg. v. Steward of Eton College*, in which it is decided, that in a conveyance by several tenants in common, a separate stamp must be affixed in respect of each tenant's share, and not one stamp only in respect of the sum total of the purchase money. Though the decision is in respect of a copyhold estate, it seems, he says, to be just as applicable to that of freehold.

# The Legal Observer.

SATURDAY, MARCH 7, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## OBJECTIONS TO A GENERAL REGISTRY OF DEEDS.

We lately placed before our readers the excellent observations of the late Professor Park, on the subject of a General Registry of Deeds.<sup>a</sup> We have looked farther into the subject, and have condensed into a small space some of the principal objections to the measure.<sup>b</sup>

1. A general register would effect considerable alteration in the law of real property, and particularly the present rules of equity, as to priorities, would be changed. It would consequently be of great importance that this effect of the register, and its practical details, should be understood by professional persons. It is however to be apprehended, that practitioners who would only occasionally have to consider the effect of the register, would bestow little attention to a system of law founded essentially on different principles from those applicable to their old practice. It would be considered a burthen to give the requisite attention to the new system, without being relieved from the old one.

2. Dealings with lands subject to the register, would often be blended in the same transaction with other lands, so that the title, as to lands held together, would have to be dealt with upon different principles, and thus the trouble and expense would be increased. As to land subject to the register, the expense of a register would be incurred, and the parties would still (in the same transaction) be involved in all

the difficulties and expense, and questions as to priorities, upon the old principles of equity.

3. For a fair trial of the register, a very long period would be necessary, perhaps at least twenty years. The owner of an estate who has not occasion to sell or mortgage it, would be excluded for an indefinite period from any advantage to be derived from a register; and the country generally would continue during the present generation, to suffer under the evils now complained of,—great part of which, as appears from the various volumes of the commissioners, admit of and require an immediate remedy, without any violent change. The commissioners have declared, that a register must be productive of many inconveniences, and may be attended with many evils, and it is evident that it must necessarily put an end to a large proportion of small transactions in lands, already circumscribed to a degree inconsistent with the true policy of the country.

4. At the outset of the new register, everything will depend upon efficient superintendence, and it is obvious that persons of practical experience will be required; and this could not be obtained at any expense, until the register had been some time in operation. Great confusion, and consequent loss to many persons would be caused at the opening of an office where the registrar, clerk, and solicitor have the practice to learn, and where, for a considerable time, there must be a press of business waiting to obtain the benefit of the register. The treasury can compensate for the pecuniary loss, but the person who loses an estate by the mistake or inadvertence of a registrar or solicitor, will still be subject to great anxiety, loss of time, and litigation, and his wish to possess

<sup>a</sup> See p. 356, *ante*.

<sup>b</sup> We shall be prepared to give a form of petition embodying the main reasons against the bill, if it should be likely to make any further progress.

the estate which he purchased will, at all events, be frustrated.

5. It is not denied that frauds have been committed under the present system; but they are of exceedingly rare occurrence. If the cases of fraud which have happened through misplaced confidence, the loan of deeds, second mortgages, without notice to the first mortgagees, and want of ordinary vigilance were deducted, and also those which might be prevented by simple precautions at the Stamp Office, and a few new rules as to the contents and execution of deeds, there will be found very few instances in which a register will be the best or only remedy. It may be expected that the frauds through misplaced confidence will be increased under a system of registry. It has been studiously pressed upon those who are adverse to the establishment, that registration will not be essential to the validity of a deed. A more mischievous doctrine could not have been broached, when the neglect to register subjects to the loss of property. It is stated in one of the volumes of the commissioners that, amongst other evils, a new source of litigation will be opened by premiums being given to dispense with registration.

6. The professional men of the present day have a direct interest in supporting the scheme; for whilst the benefits to the landowners are prospective and contingent, an increase of professional charges is certain and immediate, and must continue so long as the old and new systems shall be simultaneously in operation. If the profession had in view only the security of the title to lands, the Statute of Enrolments, operating as a local register, even without any new law, offers the means of preventing fraud; and by a slight change of the law, and the practice of conveyancing, all the good effects expected from the general register would be produced.

7. The commissioners observe, that any measure which would tend to disturb present possession, would be mischievous. Now a general register would unsettle almost every transaction, for every mortgagee would insist upon a new mortgage, and every person having a covenant for further assurance would require a further assurance to be placed under the protection of the register.

8. The transfer of landed property cannot be guarded with too many forms, for the omission of which the solicitor should be made responsible, and for the due observance he should be rewarded with extra

fees, or the parties should have some advantage, such as the facility of proof in a court of justice, not given to those whose deeds are not executed with the same forms. This is the only safe mode of introducing changes which require the active co-operation, and not merely the tacit submission of the parties subject to them. A law exacting a compliance with new forms, under the penalty of nullity, "in a country of so great extent as England, where transfers of property are more frequent than in any other part of the globe," can never be contemplated without the utmost dread by those who know that it has to be put in execution by upwards of 10,000 persons in 70,000 transactions, in the course of the year, many of these persons being prejudiced against it—all inexperienced—all educated under a different system, and the law itself "so novel, that the experiments which have been tried afford no criterion of the utility of the measure, or of the means of accomplishing it."

We shall at an early opportunity state several other important reasons against the project.

## POINTS IN COMMON LAW.

### OPERATION OF THE STAMP LAWS.

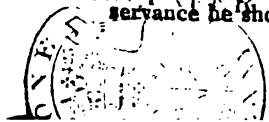
In pursuance of a plan already sufficiently explained and illustrated, we proceed to lay before our readers two cases very recently reported, in each of which suitors were deprived of their remedy against debtors, by reason of their inadvertently neglecting to comply with what is now adjudged to be one of the provisions of the Stamp Act.

In the first of the cases to which we are about to advert,<sup>a</sup> a construction was put upon the act as regards receipts in full of any debt, or in satisfaction of a debt the amount of which is not specified, which was admitted to conflict with a reported decision of the late Chief Justice Abbott, when sitting at *nisi prius*,<sup>b</sup> and which will probably come with surprise upon many, who in the daily transactions of life have been in the habit of giving and taking receipts of a similar description, without any one having suggested a doubt of the validity of the instruments thus exchanged.

The circumstances under which the

<sup>a</sup> *Burt v. Lee*, 14 Mees. & W. 177.

<sup>b</sup> *Dibdin v. Morris*, 2 Car. & P. 44.



matter was brought under the consideration of the court were as follow:—

In an action to recover 29*l.* 6*s.*, the balance of an account for plasterer's work done by the plaintiff for the defendant at some houses, in the Wellington Road, St. John's Wood, the defendant pleaded payment before action, upon which issue was joined. At the trial it was proved, that as the work proceeded the plaintiff required to be paid by the defendant weekly, in sums varying from 2*l.* to 4*l.*, for which receipts were given. Upon the completion of work it was said, that the plaintiff received two guineas, and gave a receipt in his own handwriting, which was in the following terms, and was tendered in evidence by the plaintiff to prove the facts therein stated:—

"1843, July 8. Received of Mr. S. Leigh, the sum of 2*l.* 2*s.*, being the balance of account up to this day, for houses in Wellington Road. Wm. Burt."

This receipt, which did not contain any stamp, was objected to, on the ground that it required a 10*s.* stamp; but the Chief Baron, who presided at the trial, received it, subject to the opinion of the court, and the defendant had a verdict.

When the matter came to be argued before the court, it was conceded, that the admissibility of the document in question in evidence, depended altogether upon the construction which it was incumbent on the court to give to the general clause to the schedule of the Stamp Act, title, "Receipts," which was as follows:—

"And any receipt or discharge, &c. given to any person for or upon the payment of money, which shall contain, import, or signify any general acknowledgment of any debt, account, claim, or demand, whereof the amount shall not be therein specified, having been paid, settled, balanced, or otherwise discharged or ratified, or whereby any sum of money therein mentioned shall be acknowledged to be received in full, or in discharge or satisfaction of any such debt, shall be deemed and taken to be a receipt for the sum of 1,000*l.* or upwards, within the meaning of this schedule, and shall be charged with the duty of 10*s.* accordingly."

On the part of the defendant it was argued, that the instrument in question did not require a 10*s.* stamp, as it was not a receipt for an amount "not therein specified," the amount actually received (two guineas) being specified therein; nor was it an acknowledgment "in full" of any debt. It was merely a receipt for two guineas, being the "balance of an account up to this day." The case of *Morris v. Dibdin* was pressed on the court as expressly in point. In that case a receipt was given by the stage manager of a theatre for 52*l.* 10*s.* "in satisfaction of all my claims for the

last season," and *Abbott, C. J.*, decided, that it did not require a 10*s.* stamp on the ground that it was not a receipt in full for all demands.

In the course of the argument it was observed, from the Bench, that the case of *Dibdin v. Morris* had probably tended to keep the public and even the profession in ignorance of the clause in the Stamp Act, requiring that a receipt in full of any debt should have a 10*s.* stamp, as the clause now cited was never once adverted to at either side in that case. It was also remarked, that if the construction now contended for on the part of the defendant were correct, any person owing 100*l.* might evade the stamp duty, by paying 1000*l.* on account, and then paying the remaining 4*l.*, and taking a receipt for it on plain paper, as for the balance of an account. The court ultimately decided against the defendant, on the ground that the receipt above set forth was an acknowledgment of a sum therein mentioned being received in satisfaction of a debt, whereof the amount was not therein specified, within the words of the schedule. Under these circumstances it was held, that the document in question was improperly received in evidence.

The point decided in the second case to which we are about to refer, although it does not bear so directly on the every day transactions of mankind, arises upon a state of facts, we apprehend, of very common occurrence, where a promissory note is indorsed with a memorandum explaining the circumstances under which it is given, or the intention of the parties to do it.

The note in question was in the following form:—

"Market Rason, July 1, 1836. Borrowed and received of the Lincoln and Lindsey Banking Company, the sum of 100*l.*, which we jointly and severally promise to pay to Sir Montague Cholmeley, Bart., and William Wriglesworth, (trustees of the said banking company,) or their order on demand, with lawful interest for the same. Thomas Smith, sen., Thomas Smith, jun., Thomas Darley."

On the back of the note the following memorandum was indorsed:—"The within note is given for securing floating advances from the Lincoln and Lindsey Banking Company, to the within named Thomas Smith, sen., with lawful interest for the same, from the respective times when such advances have been or may be made, together with commission, stamps, postages, &c. and all usual charges and disbursements, not

exceeding in the whole at any one time the sum of 100*l.* within mentioned. Thomas Smith, sen., Thomas Smith, jun., Thomas Darley."

The question arising upon the production of this document was, whether it was sufficiently stamped as a promissory note, or if it required an agreement stamp. On the part of the plaintiffs, who sued on the note, it was contended, that the indorsement was nothing more than an amplification and explanation of the words "value received," in the note, and that the note and indorsement together amounted to no more than a promissory note. On the other hand it was insisted, that the note and indorsement taken together amounted not to a promissory note, but to a guarantee to repay the plaintiffs so much money as they might advance to T. Smith, sen., not exceeding 100*l.*, and that if nothing was due from Smith, nothing could have been payable upon this instrument. The cases of *Hartley v. Williamson*,<sup>d</sup> and *Leeds v. Lancaster*,<sup>e</sup> were cited as being precisely in point.

The court in pronouncing its judgment observed, that there was a plea of the statute of limitations on the record, and in order to take the case out of the statute, it was necessary for the plaintiffs to show that there had been part payment of principal or interest on the note, and for that purpose to connect the floating balance with the note, to show that it was intended to be a security for the floating balance. In this view the indorsement was an agreement, the matter of which was above 20*l.*, because it referred to a note of the value of 100*l.*, and ought therefore to have had an agreement stamp. On these grounds the court made a rule absolute to set aside a verdict for the plaintiffs, and enter a nonsuit.

## NOTICES OF NEW BOOKS.

*The Law of Railways, including the Three General Consolidation Acts, 1845, and the other General Acts, for regulating Railways in England and Ireland, with Copious Notes of Decided Cases; also the Proceedings in Parliament respecting Railway Bills, with Forms, &c. Second Edition, considerably Enlarged.* By LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. London: Henry Butterworth, 7, Fleet Street, 1846. Pp. 723.

MR. SHELFORD has made considerable additions to his work on the Law of Railways since his first edition last year. The

liabilities incurred by provisional committees and directors, and by subscribers or shareholders in railway companies, naturally attract peculiar attention at the present time. Referring, therefore, to the notice of the first edition in our last volume, (p. 378,) we shall make some extracts from the chapter on these attractive subjects:

First, as to the liability of Provisional Committees and Directors, Mr. Shelford has collected the following cases:—

"When it is proposed to establish a railway company, or similar undertaking, a prospectus is usually issued, containing a statement of the objects of the company,—of the proposed amount of capital to be subscribed, and of the number of shares into which it will be divided, with a short sketch of the proposed constitution of the company in material particulars. In order to allow a deviation from the prospectus, it is usual to add that the directors will have the power of making alterations or modifications in the particulars of the prospectus. To entitle a party to maintain an action upon the case against the directors of a joint stock company for false and fraudulent representations, contained in the prospectus and scrip certificates issued by them, it must distinctly appear that he became the purchaser upon the faith of such representations; and to render the directors liable to such an action, it is not enough to show that the representations are false. If the directors acted upon a fair and reasonably well-grounded belief that they were true, they are not responsible for them, however unfounded they may turn out to be. (*Shrewsbury v. Blount*, 2 Scott, N. R. 588; 2 Man. & G. 475.)"

"A defendant was held liable for an engineer's bill, although it was not proved that he had signed a deed as a director, or was present at the meeting at which the order was given, where it was shown that he had attended subsequent meetings and inspected the work during its progress. (*Maudsley v. Le Blanc*, 2 Car. & P. 409, n.)"

"There are many cases in which works are done and expenses incurred, preparatory to the formation of a company, as for instance, where a committee has been formed and steps are taken under its orders, with a view of establishing a railway by act of parliament. Before the act passes, it was said by Lord Tenterden, C. J., (*Moneypenny v. Hartland*, 1 Car. & P. 352,) that the surveyor and other persons employed look to the committee or body of adventurers who first employ them, but after the passing of the act, it must be considered that they look to the company or persons made liable under the act. So that in such a case, it becomes a question for the jury as to whom credit was given. In *Kerridge v. Hesse*, (9 Car. & P. 200,) it had been proposed to construct a railway from Nottingham to London. The plaintiff had been on the 3rd of June, 1838, appointed secretary to

<sup>d</sup> 4 Campb. 127.

<sup>e</sup> 2 Campb. 205.

the local committee, who were engaged in trying to form a company. The defendant became one of the committee in October, 1838, whilst the plaintiff's services continued. The company was never formed, and the projected railway was given up. *Alderson, B.*, stated to the jury, that the members would be the persons liable to pay the salaries of the plaintiff, unless he contracted only to be paid from some particular fund, and not to look to the committee for payment. The real question in the cause is, whether the plaintiff agreed that he was not to look for payment from the members of the committee individually; but was only to be paid from the deposits and instalments in case the company should be formed.

"On all projects of this kind some expense must be incurred before many members join the concern, such expense, if the scheme proves abortive, will fall upon the original projectors, and not upon those who advance their money on the faith of its going on. (*Nockells v. Crosby*, 3 B. & C. 822.)"

"In an action for goods supplied by the plaintiffs to the directors of a company, on the order of a secretary, against the defendant, who was not shown to have interfered in the management of the concern beyond having been once at the manufactory, when he said he understood the nature of the works, *Parke, B.*, said the defendant, by taking shares in the speculation, gives authority to the directors to bind him by their contracts, in the event of the proposed number of shares being disposed of, and the proposed capital obtained. The secretary, who gives the order to the tradesman, is the party primarily liable; the directors also, who give the order to the secretary, may be liable. A third party may become liable, if it can be shown that he has authorised the act of the directors in making the contract. But by proving the defendant to be an original subscriber, unless the proposed capital is raised, no such authority is shown. (*Pitchford v. Davis*, 5 Mee. & W. 2.)

"If persons set a scheme a foot, and assume to be directors or managers, all the expenses incurred before the scheme is in actual operation must in the first instance be borne by them. When it is in operation, the expense and charge of management should be borne by the concern, and then it may be said that the preliminary expenses should be paid in the same way, for then the subscribers have the benefit of them. (*Nockells v. Crosby*, 3 B. & C. 814, see p. 824.)"

"Four persons who had acted as directors of a proposed railway company, being sued for debts contracted on account of the concern, jointly retained an attorney to defend them on personal responsibility; it was held that one of the four who had paid the attorney's bill was entitled to sue the others for contribution. *Edger v. Knapp*, 6 Scott, N. R. 707; 1 Dowl. & L. 73; 7 Jur. 593.) In the year 1836, a line of railway from London to Brighton was put be-

fore the public as 'Cundy's line without a tunnel.' Previous to applying for the assent of parliament, and preparatory to such application, and while the plaintiff, the defendant, and two others were acting as directors, Messrs. *P. & W.*, solicitors, were appointed parliamentary agents, and subsequently solicitors to the company; various persons, engineers, surveyors, lithographers, and others were employed by the directors, offices were taken, and the usual measures were adopted (there being other competing lines of railroad with the same termini) of recommending this one to the patronage of the public and of the legislature. The usual notices were given of application to parliament; but the standing orders of the house were not complied with, and the project dropped, and the company were merged in another, adopting another line of road. This was in 1837. Upon the dissolution of the company, a series of actions were brought (in which some two or more of the four directors were interchangeably made defendants) by the various persons employed as above stated. The actions were defended, and successfully in most instances, but the plaintiffs were some of them insolvent. In 1840, the solicitors delivered their bill to the four directors and requested payment. Two of them, *S. and E.*, each paid one fourth; the defendant *K.* admitted his liability to pay; but the plaintiff paid his own share and that of the defendant also; and now he brought his action to recover from the defendant what he had paid for him, and a verdict was given in his favour. (*Edger v. Knapp*, 7 Jur. 593.)"

Second, as to the liability of Shareholders:—

"Where the prospectus indicates that a company is about to be formed, and not that one is actually formed, and it appears to be in the contemplation of the subscribers to establish a company on certain conditions, the subscribers will not be liable for goods supplied to the company, as partners, unless those conditions have been performed. (*Nockells v. Crosby*, 3 B. & C. 814; *Bourns v. Freeth*, 9 B. & C. 632; 4 M. & R. 512; *Braithwaite v. Skofield*, 9 B. & C. 401; see *Wood v. Duke of Argyll*, 7 Scott, N. R. 885; *Law J.* 1844, C. P. 96.) Where a prospectus imports only that a company was to be formed, not that it was actually formed, it was held that a person who had signed it did not, by so doing, hold himself out to the world as a partner, and consequently was not liable in an action for goods sold and delivered to the company. (*Braithwaite v. Skofield*, 9 B. & C. 401.)

"But if it be shown that the subscriber knows that the directors are carrying on the undertaking with a less capital, and has acquiesced in their so doing, he may become answerable for their future contracts. (Per Lord Abinger in *Pitchford v. Davis*, 5 Mees. & W. 2; see *Smith v. Goldsworthy*, 4 Q. B. R. 456; *Davis v. Hawkins*, 3 Mau. & S. 488.)"



"Attending in the character of a shareholder a meeting of the members of a joint-stock company, is sufficient *prima facie* evidence that the party is a shareholder to charge him with an engagement entered into by the majority of the shareholders present at a subsequent meeting which he does not attend. (*Harrison v. Heathorn*, 6 Man. & G. 81.)"

"A number of persons associated together and subscribing sums of money for the purpose of obtaining a bill in parliament to make a railway, are partners in the undertaking; and therefore a subscriber, who acted as their surveyor, cannot maintain an action for work and expenses done and incurred by him in that character on account of the partnership, against all or any of the other subscribers. (*Holmes v. Higgins*, 1 B. & C. 74.) A. B., at the request of the plaintiff, became the holder of shares, for the benefit of the plaintiff, in a company to which the plaintiff was solicitor. The plaintiff paid the deposits, and all the expenses on the shares. In an action by him against the members of the company, for money laid out for the use of the company in advertising and in journeys: it was held, that the plaintiff could not recover, as being the real (though A. B. was the ostensible) partner. (*Goddard v. Hodges*, 1 C. & M. 33; 3 Tyr. 209.)"

"Where it was proved that A. B. had contributed to the funds of a building society, and had been present at a meeting of the society, and party to a resolution that certain houses should be built, it was held, that this made him liable to an action for work done in building those houses, without proof that he had any actual interest in them, or in the land on which they were built. (*Braithwaite v. Skofield*, 9 B. & C. 401; see *Vice v. Anson*, 7 B. & C. 409.)"

"Each subscriber to a scheme, who pays his subscription on a prospect that the scheme will continue, and does no act rendering himself liable to the expense of attempting to bring it into operation, may, if it afterwards proves abortive or is abandoned, without any steps being taken towards carrying it into effect, recover back the whole of the money advanced by him, without the deduction of any part towards payment of the expenses incurred; and, under such circumstances, it seems that the action may be maintained, although the scheme would have been open to the objection of illegality had it been effectuated. Therefore where a prospectus for establishing a scheme called the *British Metropolitan Tontine* was circulated, stating the money subscribed was to be laid out at interest, and that at the expiration of a year every subscriber should receive a shareholder's ticket, which would be saleable or transferable, and after some subscriptions had been paid to the directors, in whom the management of the concern was vested, but before any part of the money was laid out at interest, and

before any shareholders' tickets had been delivered, the directors resolved to abandon the project; it was determined that each subscriber, in an action for money had and received, might recover the full amount of his subscription from the directors, because, until the money had been laid out in execution of the proposed scheme, the shareholders did not become jointly interested in the funds of the concern, and consequently were not partners; and that the respective subscriptions were not subject to any deduction on account of expenses; for all expenses incurred in endeavouring to bring an abortive scheme into actual operation must be borne by the original projectors, and not by those who advance their money on the faith of its going on. (*Nockells v. Crosby*, 3 B. & C. 814.)"

## NEW BILLS IN PARLIAMENT.

### FRIENDLY SOCIETIES.

The 4 & 5 W. 4, c. 40, enacted, that it shall be lawful for any number of persons in Great Britain and Ireland to form themselves into and to establish a society, under the provisions of that act, for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal: And it being expedient to extend the objects or purposes for which a society may be established, under the provisions of the act; it is proposed to enact,

That a society may be established, under the provisions of the said recited acts,\* for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average, or for any purpose whatsoever which is not illegal, whether of the same description as is hereinbefore mentioned or otherwise: Provided, that when a society is formed, under the provisions of the said recited acts, or this act, for any purpose in addition to that for providing relief in case of sickness, infancy, advanced age, widowhood, or other natural state or contingency as aforesaid, the contributions or payments shall be kept separate and distinct, or the charges defrayed by extra subscriptions of the members.

### ROMAN CATHOLIC RELIEF.

By the 7 & 8 Vict. c. 102, the several Penal Acts and parts of Penal Acts thereafter man-

\* There appears to be an omission in the recital of the bill, for the marginal abstract refers as well to the 10 Geo. 4, c. 56, as the 4 & 5 Wm. 4, c. 40.

tioned or specified were, from and after the passing of that act, repealed: And the present bill recites, that notwithstanding the provisions of that, her Majesty's Roman Catholic subjects do still continue to be liable, for or on account of their religious belief or profession, to sundry pains, penalties and disabilities, ordained and enacted by certain acts, made and passed by the parliament of England, the parliament of Great Britain, and the parliament of Great Britain and Ireland respectively, and to which punishments, pains, penalties and disabilities none other of her Majesty's subjects are liable:

Then the bill states, that it is expedient that all such punishments, pains and penalties as aforesaid shall be for ever repealed and taken away: And that it is likewise expedient that all such and so many of the aforesaid disabilities shall be in like manner repealed and taken away, as do not in anywise relate to the holding of offices *judicial, civil, collegiate, or ecclesiastical*, or to the presenting to ecclesiastical benefices, or as do not in any other manner tend to the better securing and strengthening the present church establishment, and the present civil government, and the settlement of property within this realm; it is therefore proposed—

1. That from and after the *passing of this act*, the several acts hereinafter mentioned, or so much and such parts of any of them as are hereinafter specified, shall be repealed; that is to say—

So much of 1 Eliz. c. 1, whereby it is enacted, "that, if any person or persons dwelling or inhabiting within this your realm, or in any other your highness's realms or dominions, of what estate, dignity or degree soever he or they be, after the end of thirty days next after the determination of this session of this present parliament, shall, by writing, printing, teaching, preaching, express words, deed or act, advisedly, maliciously and directly affirm, hold, stand with, set forth, maintain or defend, the authority, pre-eminence, power or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state or potentate whatsoever, heretofore claimed, used or usurped within this realm, or any dominion or country being within or under the power, dominion or allegiance of your highness, or shall advisedly, maliciously and directly put in use or execute anything for the extolling, advancement, setting forth, maintenance or defence of any such pretended or usurped jurisdiction, power, pre-eminence and authority, or any part thereof, that then every such person and persons so doing and offending, their abettors, aiders, procurers and counsellors, being thereof lawfully convicted and attainted, according to the due order and course of the common laws of this realm, for his or their first offence shall forfeit and lose unto your highness, your heirs and successors, all his and their goods and chattels, as well real as personal; and if any such person so convicted or attainted shall not have or be worth of his proper goods and chattels to the value of twenty pounds at the time of his conviction or attainder,

that then every such person so convicted or attainted, over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year, without bail or mainprize."

Also, the whole of 5 Eliz. c. 1, except so much and such parts of the said act as do in any wise relate to the taking and pronouncing the oath therein mentioned, by any spiritual or ecclesiastical ministers of the Church of England, by law established, by any persons taking orders, commonly called, "*Ordines Sacros*," or ecclesiastical orders in the said church, or by any persons to be promoted, preferred or admitted to any degree of learning in any university then within the realm or dominions to the same belonging, or by all or any such of the other officers, ministers or other persons in the said act mentioned, described or referred to as are not Roman Catholics.

Also, the whole of 13 Eliz. c. 2; 1 Jac. 1, c. 4; 3 Jac. 1, c. 4.

Also, so much of 13 & 14 Car. 2, c. 4, as in any way relates to the offence of willingly and wittingly hearing and being present at any other manner or form of Common prayer, of administration of the Sacraments, of making of ministers in the churches, or of any other rites contained in the said book than is therein mentioned and set forth, so far as the same in anywise relates to Roman Catholics. And also, so much of the said last-mentioned act whereby it is forbidden to any schoolmaster or other person instructing or teaching youth in any private house or family, as a tutor or schoolmaster, to instruct or teach any youth as a tutor or schoolmaster before license obtained from his respective archbishop, bishop or ordinary of the diocese, according to the laws and statutes of the realm, and before such subscription and acknowledgment as therein aforesaid, so far as the same doth in anywise relate to Roman Catholics.

Also, the whole of 25 Car. 2, c. 2; 30 Car. 2, st. 2, c. 1; 7 & 8 Will. 3, c. 24; and 11 & 12 Will. 3, c. 4.

Also, so much of 18 Geo. 3, c. 60, whereby it is enacted, "that nothing in this act contained shall extend or be construed to extend to any Popish bishop, priest, jesuit or schoolmaster who shall not have taken and subscribed the above oath in the above words before he shall have been apprehended or any prosecution commenced against him."

Also, so much of 31 Geo. 3, c. 32, as makes it a condition precedent to any relief or benefit being had or taken under or by virtue of the said last-mentioned act, that the oath thereby appointed shall have been previously taken and subscribed by the party desiring such relief or benefit, or that his or her declaration and oath or name or description shall have been previously recorded in any of his Majesty's Courts of Chancery, King's Bench, Common Pleas or Exchequer at Westminster, or at any quarter or other general session of the peace for any county or other division or place.

Also, so much of the said last-mentioned act, whereby it is enacted, "that nothing herein

contained shall be construed to give any ease, benefit or advantage to any person who shall by preaching, teaching or writing, deny or gain-say the oath of allegiance, abjuration and declaration hereinbefore mentioned and appointed to be taken as aforesaid, or the declarations or doctrines therein contained, or any of them." Also, so much of the said last-mentioned act, whereby it is provided and enacted, "that no schoolmaster professing the Roman Catholic religion shall receive into his school for education the child of any Protestant father," Also, so much of the said last-mentioned act, whereby it is provided and enacted, "that all uses, trusts and dispositions, whether of real or personal property, which immediately before the 24th day of June, 1791, shall be deemed to be superstitious or unlawful, shall continue to be so deemed and taken, anything in this act contained notwithstanding." And also, so much of the said last-mentioned act, whereby it is provided and enacted, "that no benefit in this act contained shall extend or be construed to extend to any Roman Catholic ecclesiastic permitted by this act, who shall officiate in any place of congregation or assembly for religious worship permitted by this act, with a steeple and bell, or at any funeral in any church or churchyard, or who shall exercise any of the rites or ceremonies of his religion, or wear the habits of his order, save within some place of congregation or assembly for religious worship permitted by this act, or in a private house where there shall not be more than five persons assembled besides those of the household."

Also, so much of 10 Geo. 4, c. 7, whereby it is enacted, "that if any person after the commencement of this act, other than the person thereunto authorized by law, shall assume or use the name, style or title of archbishop of any province, bishop of any bishoprick, or dean of any deanery in England or Ireland, he shall for every such offence forfeit and pay the sum of one hundred pounds." Also, so much of the said last-mentioned act, whereby it is enacted, "that if any Roman Catholic ecclesiastic, or any member of any of the orders, communities or societies hereinafter mentioned, shall, after the commencement of this act, exercise any of the rites or ceremonies of the Roman Catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses, such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of fifty pounds." Also, so much of the said last-mentioned act as imposes penalties upon any person holding any judicial, civil or corporate office, who shall resort to or be present at any place of worship in England or Ireland, other than that of the United Church of England and Ireland, or in Scotland, other than that of the Church of Scotland as by law established, in the robe, gown or other peculiar habit of his office, or attend thereat with the ensign or insignia, or any part thereof, or of belonging to such his office. And also,

so much of the said last-mentioned act as relates to the gradual suppression and final prohibition of jesuits and members of other religious orders, communities or societies of the Church of Rome, bound by monastic or religious vows, and resident within the kingdom, and the coming and returning of jesuits or members of any such religious orders, communities or societies into this realm, and the registration of jesuits or members of any such orders, communities or societies, and the admittance of persons to become jesuits or regular ecclesiastics or brothers or members of any such religious orders, communities or societies, and the administering or taking of any oaths, vows or engagements, purporting or intending to bind the persons taking the same to the rules, ordinances or ceremonies of any such religious order, communities or societies, and the granting of licences in writing, signed by any one of his Majesty's principal secretaries of state, being a Protestant, and the several misdemeanors in the premises respectively created or enacted or declared by the said act, and the fines or forfeitures of monies, pains and penalties of banishment and transportation beyond seas for term of life, and all other the forfeitures, pains, penalties, punishments and disabilities thereby respectively in that behalf enacted against all persons respectively offending in the premises, or otherwise provided or enacted or ensuing for or in respect of or as incidental to the same.

## MODE OF CONDUCTING ELECTIONS.

### *To the Editor of the Legal Observer.*

SIR,—Can no means be adopted in order to check the poll at an election, and state the poll with accuracy?

At the last Westminster election, the successful candidate stated his majority at 172 less than the real majority, as declared by the returning officer; giving his own votes at 140 less, and his opponent's at 32 more than the true numbers. The other candidate stated his votes at 13 less, and his opponents at 50 less than the true numbers.

With the actual majority, the statements were comparatively unimportant; but suppose the numbers had been as close as those for the city, when Lord John Russell was returned by a majority of 9; the inconvenience would have been very serious.

The following suggestions, which may perhaps be followed up by some of your correspondents, will, I trust, be of some use, in the attainment of a nearer approach to accuracy.

Much greater care should be taken in the appointment of check clerks, than is usually given to such appointments; it is too often supposed that any man who can write a good hand, is fit for such appointment:—but on the contrary, it requires a man of perfect coolness and readiness, combined with firmness; and no man lacking any one of those qualities, is ever fit for the office.

Care should be also taken, that the sheets are clearly ruled and printed, and that the candidates' names are inserted in the same order as they are printed in the poll-books:—only a moderate number of names should also be written in each sheet, and in general, advantage will be found in limiting the number to 10.

Let all the sheets for each booth have a mark distinguishing them, and when the numbers in each sheet are polled off, let them be marked as posted off, in order to avoid in the hurry the chance of again posting off the numbers before the sheets are filed.

Some means might also be devised for supplying the contents of sheets lost; and after all, this may be the chief cause of the mistakes in publishing the numbers.

My remarks are merely intended to draw attention to the matter, which must, before long, be interesting to all readers engaged in elections; I do not, therefore, add any suggestions as to the means of supplying such losses;—should, however, no other correspondent do so in a week or two, I will send a few suggestions which may probably be of service.

A. B.

[We shall take an opportunity of calling attention on this subject to Mr. Rouse's *Election Manual*.—ED.]

## THE INNS OF COURT.

### STUDYING FOR THE BAR.

To the Editor of the *Legal Observer*.

SIR,—The system of admission to the bar by a numerical standard of dinners ("eating their way to the bar," as it is called,) however well it might have answered three centuries ago, is, or at least ought to be in 1846, one of the curiosities of antiquity. Supplied with students, as the inns of court then were, from the inns of chancery, these students living in the house, and subject to the readings and mootings, (at that time real tests of ability for the bar,) dining in commons would be a reasonable enough adjunct, especially if the rule be considered, as I think there is little doubt it was originally intended, in a considerable degree, a moral restraint. But it surely requires no more than a remembrance of the facts to be convinced that what was advantageous under these circumstances, must now have become useless, if not worse.

When, among other unimportant alterations, it was found absolutely necessary to relax the qualification in one respect, that is, reduce the number of dinners, it is strange the question, would it not be advisable to substitute something in their place? did not occur to any of the learned benchers. Indeed a system so utterly inefficient for a good purpose, and the arbitrary and only power of alteration vested in an irresponsible body, is a perfect anomaly at the present day. I cannot help quoting the con-

cluding sentence of the remarks made by the common law commissioners on the subject, in their sixth report (March, 1834):—"If the body is to enjoy this privilege," (the medium of admission to the bar,) "it is no longer a private association, but one in which the public has a deep interest, and the proceedings of which, if not adapted to the purposes of general utility, ought to be made so by the interposition of law."

I fully coincided with your remarks on the position of the inns of court, (vol. 30, p. 89,) and I think all must admit that this admirable step taken by the Middle Temple is a verification of them. Veneration for their antiquity and dignity has preserved them through many changes, but the anomaly has become so palpable, that if they do not modernize themselves their dignity and power will hang by an extremely brittle thread; and who that feels an interest in them can help fearing that if they persist in a disregard of self-correction, they may possibly be more roughly handled than is necessary. But I hail the commencement—"Well begun is half done," the adage says, and let us hope that in this instance it will not stop at half done. With immense present advantages, and nothing to gain by delay, but compulsion to do that of which they may now make in some degree a merit, the benchers of the inns will assuredly be acting unwisely, if they may not be charged even with a betrayal of the trust reposed in them, if they do not at once boldly come forward and admit by their actions as a body, what they surely cannot doubt individually, that the present state of the inns is unsuitable to the students, the profession, and the country.

I trust the Middle Temple will not stop here. Why should there be but one lecturer? It would not perhaps be wise to make too great changes suddenly; but let it be understood that if the experiment succeeds, the plan will be more extended. And surely the other inns will not stand quietly by? It would not be necessary, or perhaps even advantageous, to have a lecturer on jurisprudence and civil law in each inn, but let (as you have often urged) some uniform plan of admission be adopted, and with perfect propriety and honour they might act jointly in matters of this nature.

G. T.

[We understand that all the Inns of Court have now agreed to establish courses of lectures: the Middle Temple (as already announced) on Jurisprudence and Civil Law; the Inner Temple on Common Law; Lincoln's Inn on Equity; and Gray's Inn on Conveyancing. We contended for these lectures and for an examination fourteen years ago.—ED.]

## PARLIAMENTARY RETURNS.

## Court of Chancery.

SUITORS' FUND, FROM 2ND OCT., 1844, TO 1ST OCT., 1845.

## PAYMENTS.

	CASH.			STOCK.		
	£	s.	d.	£	s.	d.
Paid Lord Chancellor's salary .. .. .	..	..	..	10,000	0	0
— Vice-Chancellor Bruce .. .. .	..	..	..	5,000	0	0
— Vice-Chancellor Wigram .. .. .	..	..	..	5,000	0	0
— Eleven Masters' salaries, at 2,500 <i>l.</i> per annum (inclusive of one quarter of one Master's salary, due but not paid, 1st October 1844) .. .. .	28,125	0	0			
— Accountant-General's salary as Master .. .. .	600	0	0			
Total Masters .. .. .				28,725	0	0
— Accountant-General's salary .. .. .	900	0	0			
— Expenses of office, office-keeper, rates, stationery, &c. .. .. .	450	0	0			
— Twenty-six Clerks' salaries .. .. .	6,797	3	4			
— Proportion of pensions to a retired Chief Clerk, deceased, of 600 <i>l.</i> , and a retired Clerk, deceased, of 400 <i>l.</i> per annum .. .. .	479	9	4			
Total Accountant-General's office .. .. .				8,626	12	8
— Two Examiners' salaries (in part) remainder being charged on the Suitors' Fee Fund .. .. .	600	0	0			
— Retired Examiner's pension .. .. .	200	0	0			
— Retired Examiner's Clerk's Pension .. .. .	100	0	0			
Total Examiners .. .. .				900	0	0
— Clerk of Affidavit's increased salary .. .. .	..	..	..	300	0	0
— Four Clerks to assist in the Report-office .. .. .	..	..	..	369	0	5
— Officers of the Lord Chancellor's Court:						
Usher .. .. .	500	0	0			
Court-keeper .. .. .	90	0	0			
Persons to keep order .. .. .	160	0	0			
Tipstaff .. .. .	99	9	4			
Serjeant-at-Arms .. .. .	374	5	3			
— Officers of Vice-Chancellor of England:						
Secretary .. .. .	500	0	0			
Usher .. .. .	200	0	0			
Trainbearer .. .. .	100	0	0			
— Officers of Vice-Chancellor Bruce:						
Secretary .. .. .	300	0	0			
Usher .. .. .	200	0	0			
Trainbearer .. .. .	100	0	0			
Court-keepers .. .. .	80	0	0			
— Officers of the Vice-Chancellor Wigram:						
Secretary .. .. .	300	0	0			
Usher .. .. .	200	0	0			
Trainbearer .. .. .	100	0	0			
Court-keepers .. .. .	80	0	0			
Total Officers of the Court .. .. .				3,383	14	7
— Solicitor to the Suitors, in lieu of Costs .. .. .	600	0	0			
Disbursements .. .. .	46	5	5			
				646	5	5
— Surveyor .. .. .	..	..	..	77	13	4
— Costs of Contempt (under Sir Edward Sugden's Act) .. .. .	..	..	..	117	14	0
— Compensations to the late Officers of the Court of Exchequer .. .. .	..	..	..	7,306	9	9
— Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices, for repairs, rates, stationery, coals, candles, servants' wages, &c. .. .. .	..	..	..	4,071	11	2
Surplus Interest invested .. .. .	..	..	..	25,000	0	0
				£ 99,524	1	4

RECEIPTS.

			CASH.			STOCK.		
			£	s.	d.	£	s.	d.
Balance on the Account, 1st October 1844	..	..	11,800	8	3	3,907,650	13	5
Stock purchased with surplus interest	..	..	..	..	..	25,044	3	3
Stock purchased with Suitors' general cash	..	..	..	..	..	192,116	9	1
Dividends received during the year	..	..	99,504	12	2			
Received of the Accountant-General, under the 5 Vict. c. 5, s. 61	..	..	150	0	0			
			111,458	0	5	3,424,811	5	9
Payments	..	..	99,524	1	4	—		
Balance on the Account, 1st October 1845	..	..	£ 11,933	19	1	3,424,811	5	9

CANDIDATES WHO PASSED THE EXAMINATION.

HILARY TERM, 1846.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Atherton, William Matthew	John Barlow, jun., Manchester
Barnard, Charles	Alfred Mayhew, 26, Carey Street, Lincoln's Inn Fields
Bell, John	Thomas Brodrick Simpson, Whitley
Beverley John	Henry Alcock, Skipton
Bloore, James	John Heathcote Hacker, Leek
Brooke, William Lombe	Ebenezer Foster, jun., Cambridge
Bulmer Charles	William Middleton, Leeds
Burton, Samuel Crickiner	Nathaniel Palmer, Great Yarmouth, Norfolk
Claris, Percy Brooke	Stephen Chalk, Dover
Cotton, Francis Josias	Charles Small, Bideford, Devon — Robert Shee, St. John's, Southgate
Cowper, William John	William Sladden, Canterbury—William Harding Wright, 23, Essex Street, Strand
Cranke, Daniel	John Cranke, Ulverston
Curteis, Edward	Thomas Mortimer Cleobury, 3, Sackville Street, Piccadilly
Daly, Thomas	Edward Bretherton, Liverpool
Daubeny, William	George Abraham Crawley, 20, Whitehall Place
Davies, George Sidney	George Augustus Aprece Davies, Crickhowell
Davies, Edward John Cox	George Augustus Aprece Davies, Crickhowell
Davies, Rowland A. Griffith	Francis Paynter, Penzance, Cornwall
Day, John, jun.	Henry Bradley, 2, Harcourt Buildings, Inner Temple
Dobson, Henry Houle	Benjamin Lawrence, 25, Old Fish Street, Doctors' Commons
Drew, George Henry	George Drew, 185, Bermondsey Street, Bermondsey
Edwards, John	Robert Medcalf, Lincoln's Inn Fields — Morris Griffith, Bangor, Carnarvon
Ellison, Thomas Michael	Edward King, 13, Queen Square, Bath
England, Richard	John England, Kingston-upon-Hull.
Fleming, John	Thomas Carr and Mark Lambert Jobling, of Newcastle-upon-Tyne—Mark Lambert Jobling, Newcastle-upon-Tyne
Fletcher, Arthur Piggott	John North, jun., Liverpool
Footitt, Christopher Carter	William Whaley Bellyard, Budleigh Salterton, Devon
Fookes, William	Edward Hoblyn Pedler, Liskeard
France, F. Augustus Harold	John Wood, 8, Falcon Street
Friend, James Walter	Charles Brutton, Exeter
Garnham, Richard Enoch	Thomas Brightwell, Norwich
Gill, Thomas Husband	James Husband, Devonport
Goolden, Daniel Haythorne	Samuel Simon Wayte, Bristol
Griffin, Arthur	Thomas Griffin, Shelton
Guy, Henry	John Sanderson Archer, Ossett, near Dewsbury, York — William Allatt, Ossett; William Jacomb, Huddersfield; Robert Benton Porter, of Howden
Hand Henry	Thomas Ives Brayne Hostage, Castle Northwich, Chester

Hardman, Alfred Lloyd . . .	James Roberts, Manchester.
Harriss, Henry . . .	Daniel Smith Bockett, 60, Lincoln's Inn Fields
Harrison, William G. Southey .	Archibold Richard Francis Rosser, 63, Lincoln's Inn Fields
Haynes, James Haynes, (formerly James Haynes Jones) . . .	Godfrey Tallents, Newark-upon-Trent
Hick, John George . . .	Henry Hick, Stokesley
Hippisley, Robert Townsend . .	John Fry Rees, Taunton
Hughes, John Spier . . .	Jonathan Hancock, Mold, Flintshire — William Slater, Manchester
Hulme, Joseph . . .	Charles William Potts, Chester — John Hilditch Adams, 14, Old Jewry Chambers
Hunt, Thomas . . .	James Richard Elliott, Rochdale
Jackson, Charles . . .	Charles Frith, Bristol, York
Jennings, John Rogers . . .	David Jennings, Whitechapel Road
Jolley, James Hatch . . .	John Gilbert Meymott, 86, Blackfriars' Road
Judge, James Robert . . .	James Bourne Judge, Ramsgate — Humphrey Whitewick, Ramsgate
Karslake, Preston . . .	William Belton Crealock, 4, Regent Street
King, William Dinham . . .	William Shilson, St. Austell, Cornwall
Knapp, John . . .	Charles Pidcock, Worcester
Lawrance, Henry . . .	Eleazer Lawrance, Ipswich
Lloyd, Edmund . . .	Joseph William Thrupp, 160, Oxford Street
Maugham, Robert Ormond . . .	Robert Maugham, Chancery Lane
Michael, James Lionel . . .	Jacob Michael, 9, Red Lion Square—Adam Yates Bird, Kidderminster, re-assigned to Jacob Michael
Miller, Henry Blake . . .	Henry Miller, Surrey Street, Norwich
Minter, John Marsh . . .	Frederick Smith, 3, Basinghall Street
Moule, Frederick George . . .	Frederick Moule, Melksham—Arthur Gore, Melksham
Petherick, John William . . .	Edwin Force, Exeter
Philcox, James, jun. . .	James Philcox and John Baldock, of Burwash
Podmore, William Handsley, . .	Jesse Bartlett, Birmingham
Poulton, Henry . . .	Henry Darvill, New Windsor
Reynolds, T. A. Fitzgerald . . .	John Bush, 7, St. Mildred's Court
Richards, John . . .	George Rooper, formerly of 8, King's Road, Bedford Row, now of 68, Lincoln's Inn Fields
Sharp, Henry Parkinson . . .	William Sharp, Lancaster—William Sharp, jun., 2, Verulam Buildings
Simpson, John James . . .	John Blyth Simpson, Derby
Smith, Alexander Blucher . . .	Richard Travers Way, Bradford
Smith, Montague George . . .	William Smith, Hemel Hempsted—John Philip Dyott, Lichfield—Anthony Blyth, Burnham, Norfolk
Taylor, William Keating . . .	Samuel Phillips Hitchcock, Manchester
Watson, Robert Green . . .	Joseph Walker, Preston
Weatherall, Edward, jun. . .	Edward Weatherall, sen., 4, King Edward's Terrace, Islington
Weller, George . . .	William Penfold, Brighton
Whitlock, John William . . .	Benjamin Austen, Gray's Inn
Wood, John Prescott . . .	John Wood, York

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.

## Common Law Courts.

[See Decisions on the Construction of Statutes, p. 333; on Grounds of Action and Principles of Common Law, p. 358; on Common Law Pleadings, 382.]

## IV. EVIDENCE.

## BILL OF EXCHANGE.

Unstamped.—In debt the defendant pleaded never indebted, and payment; the plaintiff gave evidence in chief, a document purporting that the defendant admitted the debt, but that it had

been paid by a bill of exchange; Held, that the unstamped bill was admissible in evidence for the plaintiff to negative the alleged payment. *Smart v. Nokes*, 6 M. & G. 911.

Cases cited: *Sweeting v. Hales*, 9 B. & C. 365; 1 Man. & R. 287; *Rex v. Hawkeswood*, 1 Leach, C. C. (3rd ed.) 292; 2 East, P. C. 955; 2 T. R. 606, n.; *Rex v. Pooley*, 5 B. & P. 311; *Dover v. Maester*, 3 Esp. N. P. C. 93; *Nash v. Duncomb*, 1 Moo. & R. 104; *Gregory v. Fraser*, 3 Campb. 454; *Jardine v. Payne*, 1 B. & Ad. 663; *Buxton v. Cornish*, 12 M. & W. 426; *Coppock v. Bower*, 4 M. & W. 361; *Wilson v. Vysat*, 4 Taunt. 288; *Cundy v. Marriott*, 1 B. & Ad. 696; *Rex v. Reels*, 2 Leach, C. C. 703, 704, 811; 2 East, P. C. 956; *Williams v. Gerry*, 10 M. & W. 296; 2 Dowl. N. S. 291.

GROWN.

See Documents of deceased parties, 3.

## DOCUMENTS OF DECEASED PARTIES.

1. In an action by the corporation of Exeter, for petty customs and port duties, payable on goods landed at Teignmouth, the plaintiffs, to show the receipt of such dues in former times, produced a series of accounts purporting to be receipts by the receivers of the city. It was proved that the receivers' accounts were regularly audited, and that no one could (at the time to which the evidence related) be mayor until he had been receiver, and had his accounts audited. Down to a certain time, the accounts were not signed at all; afterwards they were regularly signed by the auditors only. One entry of the latter class stated the receipt by B., a receiver, of a sum of town dues from W.; and with this entry was found a paper stating, that W. had received a sum of town dues, almost exactly corresponding with that stated in the entry, and at the time of which it bore date. No evidence was given as to the handwriting of the latter paper. B. and W. were both dead. The documents were more than thirty years old. No one of them stated the receipt to be "by me," but the third person was used. *Held*, that all the documents were admissible evidence.

2. The Crown is entitled (except where vested rights would be interfered with) to create a port for the landing of goods, and to assign its limits, though the soil be in a subject; and such creation is a good consideration for the receipt of petty customs and port dues throughout the port so assigned. And such petty customs and port dues might, in ancient times, be granted away by the Crown.

3. The plaintiffs proved a grant of the town to them by the Crown, in fee farm; and it was not disputed that they were owners of a port of some extent, with some dues; they also proved the receipt, in fact, of the dues for goods landed at Teignmouth, and leases by them of such dues. *Held* to be evidence from which a jury might infer that the port extended to Teignmouth, and that the dues were payable to the plaintiffs for goods there landed, though Teignmouth is situate on a different river from Exeter, and the mouths of the rivers are several miles apart, and though no evidence was given of repairs or other services performed by the plaintiffs at Teignmouth, or of any right to the soil there, in themselves or the Crown. *Exeter, Mayor, &c. v. Warren*, 5 Q. B. 773.

Cases cited: *Wynne v. Tyrwhitt*, 4 B. & Ald. 375; *Doe d. Thomas v. Baynon*, 12 A. & E. 431; *Doe d. Webber v. Thynne*, 10 East, 206; *Doe d. Earl of Egremont v. Date*, 3 Q. B. 609; *Bullen v. Michel*, 2 Price, 399; *De Rutzen v. Farr*, 4 A. & E. 53; *Stead v. Heaton*, 4 T. R. 669; *Highman v. Ridgway*, 10 East, 109; *Davies v. Humphreys*, 6 M. & W. 153; *Wilkes v. Kirby*, 2 Lutw. 1519; *Warren v. Pridaux*, 1 Mod. 104; *Mayor of London v. Hunt*, 3 Lev. 37; *Crispe v. Belwood*, 3 Lev. 424; *Mayor of Exeter v. Trimlet*, 2 Wils. 95; *Mayor of Yarmouth v. Eaton*, 3 Burr. 1402; *Mayor of Nottingham v. Lambert*, 3 Burr. 1404, 1407; *Lord Pelham v. Pickersgill*, 1 T. R. 660; *Truman v. Walgham*, 2 Wils. 296; *Heddey v.*

*Welhouse*, Moore, 474; *Jenkins v. Harvey*, 1 C. M. & R. 877; 2 C. M. & R. 393, 404; 8 C. 5 Tyrwh. 326, 871; *Brune v. Thompson*, 4 Q. B. 543, 552; *Case of Customs, Subsidies and Impositions*, 12 Rep. 33; *Rex v. Bates*, 2 How. St. Tr. 371; S. C. Lane, 22; *Ball v. Herbert*, 3 T. R. 253, 261; *Wynne v. Tyrwhitt*, 4 B. & Ald. 376; *Doe d. Webber v. Thynne*, 10 East, 206; *De Rutzen v. Farr*, 4 A. & E. 53, 56; *Doe d. Gallop v. Vowles*, 1 Moo. & R. 261; *Sheppard v. Gosnold*, Vaughan, 159; ib. 170; *Rex v. Bates*, 2 How. St. Tr. 407, 460, 1, 2; ib. 371, 381; 12 Rep. 34, note (a); *Mayor of Exeter v. Trimlet*, 2 Wils. 95; *Anon*, 2 Ves. sen. 620; *Dock Company at Kingston-on-Hull v. Browne*, 2 B. & Ad. 43; *Jenkins v. Harvey*, 1 C. M. & R. 877; 2 C. M. & R. 393, 404; S. C. 5 Tyrwh. 326, 871; *Case of London Wharfs*, 1 W. Bl. 581, 590; *Vinkensterne v. Edden*, 1 Ld. Raym. 384; *Haspurt v. Wills*, 1 Mod. 47; *Warren v. Pridaux*, 1 Mod. 104; *Trueman v. Walgham*, 2 Wils. 296; *Crispe v. Belwood*, 3 Lev. 424; *Colton v. Smith*, 1 Cowp. 47; *Serjeant v. Read*, 1 Wils. 91; *Lord Pelham v. Pickersgill*, 1 T. R. 660; *Reg. v. Marquis of Salisbury*, 8 A. & E. 716; *Mayor, &c. of Nottingham v. Lambert*, Wills, 111; *Brett v. Beales*, 10 B. & C. 508; *Smith v. Sheppard*, Cro. Eliz. 710; S. C. Moore 574; *Kerby v. Whicheol*, 2 Lutw. 1498, 1502; *Hill v. Smith*, 4 Taun. 520, 553; *Mayor of London v. Hunt*, 3 Lev. 37; *Wilkes v. Kirby*, 2 Lutw. 1519; *Mayor of Nottingham v. Lambert*, Wills, 117; *Mayor of Yarmouth v. Eaton*, 3 Burr. 1402; *Mayor of Exeter v. Trimlet*, 2 Wils. 95; *Mayor of Hull v. Horner*, 1 Cowp. 102, 108; *Stead v. Heaton*, 4 T. R. 669.

## EXAMINATION OF WITNESSES.

Where the defendant was an executrix, and she was willing to bring the amount claimed into court to abide the event, a commission to examine witnesses abroad was granted, although the names of none of the witnesses were given. *Cow v. Kinnersley*, 6 M. & G. 981.

Cases cited: *Dimond v. Vallance*, 7 Dowl. P. C. 590; *Beresford v. Easthope*, 8 Dowl. P. C. 294; *Gunter v. M'Tear*, 1 M. & W. 201; *Gunter v. M'Kear*, Tyrwh. & G. 245; 4 Dowl. P. C. 722; *Norton v. Ld. Melbourne*, 3 N. C. 57; 3 Scott, 398; 5 Dowl. P. C. 181; *Baddeley v. Gilmore*, 1 M. & W. 55; Tyrwh. & Cr. 369; *Carbounell v. Bessall*, 5 Sim. 626.

## EXECUTOR.

In an action for money had and received against an executor, but not naming him as such, the plaintiff proved a notice to produce the probate of the will; and also, a notice to admit "an office copy of the last will and testament of John Gale, of Lockridge, in the parish of Overton, in the county of Wilts, bricklayer, proved at Marlborough, 19th April, 1813," and a judge's order made for the admission in evidence of the document in question, which purported to be "extracted from the registry of the Archdeacon of Wilts," and to contain a copy of the will, and to be signed by "F. M., registrar," with an extract apparently from the Act Book, that the will had been proved, and probate granted; *Held*, that the document was



rightly admitted in evidence, without proof that the probate was in possession of the defendant, or of the signature of the registrar.

An action for money had and received will lie against an executor who receives the money of third parties, without declaring against him as executor.

*Quære*, if in an action against an executor, there is any legal presumption that the probate is in his possession. *Waite v. Gale*, 2 D. & L. 925.

Cases cited: *Gorton v. Dyson*, 1 B. & B. 219; S. C. 3 Moore, 558; *Doe d. Bassett v. Mew*; and *Doe d. Edwards v. Gunning*, 7 A. & E. 240; S. C. 2 N. & P. 260; *Ashby v. Ashby*, 7 B. & C. 444; S. C. 1 M. & R. 180; *Wilkes v. Hopkins*, Com. Pleas, Trin. T. 1845.

And see *Examination of Witnesses*.

#### FORGERY.

See *Trover*.

#### INSPECTION OF DOCUMENTS.

In an action for breach of promise of marriage, the court refused a rule for the defendant to inspect letters written by the plaintiff to him, which he alleged contained a release of his promise, and which, after the breaking off of the connexion, the defendant had returned to her upon an understanding that all the letters of both should be mutually returned, which she had not complied with on her part. *Goodliff v. Fuller*, 14 M. & W. 4. See *Bousfield v. Godfrey*, 5 Bing. 418; *Barry v. Alexander*, Tidd's Pr. 592.

#### LIBEL.

*Opinion of witness*.—Declaration for libel alleged that a horse race was run for stakes raised by subscription, to wit 9,100*l.*, by 182 subscribers, at which a horse, C., had been entered, and the owner was entitled either to let such horse run, or to withdraw him; that plaintiff, after C. was entered, and before and at the time of the race, became an owner of C.; that C. became lame and unfit to run, and plaintiff withdrew him; that defendants published a libel, which was set out, and which imputed, that plaintiff had betted against C., remarked on the time at which the lameness appeared, and stated that the withdrawing him was an infernal robbery. Defendants pleaded not guilty, and several pleas in justification, some alleging in substance the truth of the above imputations; but all the issues were found for the plaintiff; and it did not otherwise appear on the record that plaintiff had in fact betted.

*Held*, that the plaintiff was entitled to recover, for that there was no illegality in a horse race run without fraud, and even if there were, plaintiff was entitled to protection of his character in respect of other matters connected with the transaction, although, in the course of plaintiff's evidence, for the purpose of identifying himself as the party libelled, he showed that he had betted more than 10*l.* on the event of the race.

A witness for plaintiff stated, on cross-examination, that by the rules of the Jockey Club, the owner of a horse might bet against

his own horse and then withdraw him. *Held*, that the witness might be asked on re-examination, whether he did not consider such conduct dishonourable. *Greville v. Chapman*, 5 Q. B. 731.

Cases and Statutes cited: *Shillito v. Theod*, 7 Bing. 405; *Bentinel v. Connop*, 5 Q. B. 693; 8 & 9 Viet. c. 109, ss. 15, 18; 5 B. & Ad. 9; *Fenwick v. Laycock*, 1 Q. B. 414; *Morris v. Langdale*, 2 B. & P. 284; *Hunt v. Bell*, 1 Bing. 1; S. C. 7 B. Moore, 212; *Manning v. Clement*, 7 Bing. 362; *Taverner v. Little*, 5 New. Ca. 678; *Dunford v. Trattles*, 12 M. & W. 529; *Torrence v. Gibbins*, 5 Q. B. 297; *Yrisarri v. Clement*, 3 Bing. 432; *Hunt v. Bell*, 1 Bing. 1; S. C. 7 B. Moore, 212; *Holman v. Johnson*, 1 Cowp. 341; *Stockdale v. Onwhyn*, 5 B. & C. 175; *Stockdale v. Tarta*, 4 A. & E. 1016; *Fenwick v. Laycock*, 1 Q. B. 414; *Daintree v. Hutchins*, 10 M. & W. 85, 92; *Campbell v. Richards*, 5 B. & Ad. 840; *Ramadge v. Ryan*, 9 Bing. 333; *Wright v. Doe d. Tatham*, 7 A. & E. 313, 330.

And see p. 362, *ante*.

#### MISDIRECTION.

In April and July, 1843, B. purchased of A. a certain material called oropholithe (roof-stone), of which A. was the patentee. The portion purchased in April was described in the invoice as "roofing," and was put on a building belonging to B. by A.'s workmen. That supplied in July was described as "material," and was put on by B.'s workmen. There had been a previous purchase in October, 1842, which had been described as "flooring," and was so applied, and as to which money was paid into court. In an action upon a bill of exchange given by B. in payment of the above goods, B. pleaded that he accepted the bill in consideration of goods called oropholithe, which A. had warranted "fit for the roofing of buildings," but which proved to be useless. At the trial, B. proved, that in September, 1843, his agent had a conversation with A.'s agent about roofing certain premises he was building with the patent article, on which occasion the latter gave the former a prospectus, which described it as fit for external roofing. The judge ruled that there was no evidence to be left to the jury in support of the plea. *Held*, that the direction was right, inasmuch as there was no evidence to show that the contract for the goods subsequently supplied was made with reference to the treaty for roofing, which took place in September, 1842, or, at all events, nothing to show that the "material," sold in July, 1843, was sold for roofing rather than flooring, and that the plea failing as part, failed altogether. *Camac v. Warriner*, 1 C. B. 356.

Cases cited: *Chanter v. Hopkins*, 4 M. & W. 399; *John v. Bright*, 5 Bing. 533; 5 Moo. & P. 155; *Brown v. Edgington*, 2 Man. & Gr. 279; 2 Scott N. R. 496; *Shepherd v. Prybus*, 3 Man. & Gr. 868; 4 Scott, 434; *Olliphant v. Bayley*, 1 D. & Mer. 373; *Gray v. Cox*, 4 B. & C. 108; 6 D. & R. 200; 1 C. & P. 184; *Morgan v. Richardson*, 1 Campb. 40 n.; *Mogridge v. Jones*, 14 East, 486; 3 Campb. 38;

Solomon v. Turner, 1 Stark. N. P. C. 51; Lewis v. Cosgrove, 2 Taunt. 2; Trickey v. Larnie, 6 M. & W. 278.

#### NEWSPAPER.

**Proprietorship.**—In an action by *A.*, a contributor to a newspaper, against *B.*, who was registered sole proprietor, the defendant's counsel, to prove that *J. S.* was the real proprietor, proposed on cross-examination to ask the editor whether he had not agreed with *J. S.* that the whole expense of editing the paper should not exceed a certain sum. The judge ruled the question to be irrelevant, and refused to allow it to be put. *Held*, that it was properly disallowed. *Watts v. Lyons*, 6 M. & G. 1047.

#### OPINION.

See *Label*.

#### PARTNERS.

See *Banking Company*, p. 358, *ante*; *Ship*, 2, p. 366, *ante*.

#### SET-OFF.

To a plea of set-off to a bill of exchange, the plaintiff replied as to 19l. 3s. 2d, a discharge under the Insolvent act, and that he had inserted in his schedule "a full and true description according to the said act in that behalf, of the said debt or sum of 19l. 3s. 2d." The defendant traversed this allegation in terms. At the trial, the plaintiff offered in evidence a schedule, in which the debt due from him to the defendant was inserted as 6l. 10s., but gave no evidence to show that the debts were the same. *Held*, that this proof did not support the issue. *Maile v. Bays*, 2 D. & L. 964. See *Lambert v. Hale*, 9 C. & P. 506; *Tyers v. Stunt*, 7 Scott, 349.

#### SHERIFF.

See p. 366, *ante*.

#### SHIP.

See p. 366, *ante*.

#### TENANCY.

By a lease, dated 28th April, 1834, certain premises were demised to *T. E.*, to hold from the 1st May then next, for forty years, at the rent of 55l. a year, payable half-yearly, on the 1st November and 1st May. The lease contained a covenant by *T. E.* not to underlet without the consent in writing of the lessors, and a proviso for re-entry, in case he should commit any act of bankruptcy, on which a fiat should issue, under which he should be duly found and declared a bankrupt. In December, 1838, *T. E.* underlet a part of the premises to the defendant, with the consent in writing of the lessors, for twenty-one years, at a rent of 25l. per year. In November, 1840, *T. E.* committed an act of bankruptcy, on which a fiat was issued, under which, in February, 1841, he was found and declared a bankrupt. The lessors thereupon brought an ejectment against *T. E.*, but did not serve it upon the defendant. *T. E.* let judgment go by default, and the writ of possession was executed on the 12th May, 1841. The defendant remained in possession of

the part underlet to him. In February, 1843, an execution was levied on his goods, and the lessors served the sheriff with notice, that 25l., "a year's rent due in November last," was in arrear from the defendant to them, and required the sheriff to pay over the same out of the levy, which he did accordingly. On the 29th April, 1843, the defendant was served by the lessors with notice to quit. *Held*, in ejectment brought against the defendant, on a demise dated 4th May, 1844, that the proper inference to be drawn from the facts above stated was, that the defendant's tenancy from year to year to the lessors commenced on the 12th May, and therefore that the demise was laid too soon. *Doe d. Lloyd v. Ingleby*, 14 M. & W. 91.

#### TROVER.

**Forgery.**—In trover for certain United States treasury notes, the defence set up was, that the notes had been forged by the plaintiff, who offered them for sale to the defendant, by whom they were detained, and that to prove this it was necessary to send out a commission to examine witnesses in America. On granting the commission, the court required the defendant to deposit the notes with the masters. On the motion of the defendant, a rule was subsequently made for delivering out the notes to some person to be agreed upon, or to be named by the master, for the purpose of producing them to the witnesses under the commission, the defendant giving security to the satisfaction of the master for their safe return, and depositing *fac similes* in lieu of them.

The court considered that this rule was complied with by depositing *fac similes*, exhibiting in outline the figures and emblematical devices on the face of the notes, together with a tracing of the indorsements. *Clinton v. Peabody*, 7 M. & G. 399.

#### V. PRACTICE.

##### ARREST.

**Affidavits in another cause.**—On an application to a judge to hold a defendant to bail, under 1 & 2 Vict. c. 110, s. 3, the plaintiff may use affidavits made and used shortly before on a similar application against the same defendant at the suit of another plaintiff, intitled in the former suit, and in another court. *Longston v. Wetherell*, 14 M. & W. 104.

##### CERTIORARI.

A rule for a certiorari to remove an indictment from the sessions into the Court of Queen's Bench, on the ground that grave questions of law are likely to arise, and that a view is necessary which cannot be had at the sessions, is not necessarily a rule absolute in the first instance; but it rests in the discretion of the court so to grant it. *Reg. v. Bird*, 2 D. & L. See *Reg. v. Spencer*, 8 Dowl. 127.

##### DESCRIPTION OF DEFENDANT.

See *Process*.

##### DISCONTINUANCE.

The court has no jurisdiction to set aside a

rule to discontinue, which now by R. H. 2 W. 4, may be obtained without the defendant's consent. *Potts v. Hirst*, 6 M. & G. 934.

#### DISTRINGAS.

1. The affidavit for a *distringas* should state where the residence of the defendant is situated. *Crofts v. Brown*, 2 D. & L. 935. See *Halton v. White*, 2 M. & G. 295; *Goggs v. Lord Huntingtower*, 1 D. & L. 599; S. C. 12 M. & W. 503.

2. Where the calls had been made at the defendant's place of business, but it did not appear that the defendant's residence was unknown, or that any efforts had been made to discover it, the Court of Queen's Bench refused to grant a writ of *distringas*. *Anon.* 2 D. & L. 1001. See *Russell v. Knowles*, 2 D. & L. 595; S. C. 8 Scott, N. R. 716.

3. *Affidavit*.—Upon a motion for a *distringas*, it is not enough that the affidavit negatives the appearance of the defendant, "according to the exigency of the writ" of summons. *M'Alpin v. Gregory*, 1 C. B. 299.

#### EJECTMENT.

1. *Amendment*.—The court amended a declaration in ejectment, by adding a demise from another lessor, laid on the same day as the former, after a rule absolute for a new trial; the lessors of the plaintiff consenting that all evidence that would have been admissible, if the amendment had not been made, should be admitted on the second trial. *Doe d. Bacon v. Lady Brydges*, 6 M. & G. 1034.

Cases cited: *Doe v. Rumford*, 1 Chitt. R. 536; *Doe d. Beaumont v. Armitage*, 1 D. & R. 173; 2 Chitt. R. 302; *Doe d. Poole v. Errington*, 1 M. & Rob. 343; 1 A. & E. 730; 3 N. & M. 646; *Billing v. Flight*, 6 Taunt. 419; *Storr v. Watson*, 2 Scott, 842; *Legge v. Boyd*, 6 New Ca. 240; 8 Scott, 502.

2. *Appearance*.—The court refused a rule for judgment against the casual ejector, upon a notice requiring the tenant in a country ejectment, to appear "on the first day of the term." *Doe d. Jaques v. Roe*, 7 M. & G. 347.

3. *Declaration*.—When the declaration against the casual ejector was intituled, "In the Exchequer of Pleas," and the notice required the tenant to appear in this court, a rule for judgment was refused. *Doe d. Phillippis v. Roe*, 6 M. & G. 980.

Cases cited: *Doe d. Evans v. Roe*, 12 M. & W. 569; *Dow d. Evans v. Row*, 9 Dowl. P. C. 999.

#### EXECUTION (STAYING).

The Court of Common Pleas refused to stay execution in an action upon a judgment for a sum exceeding 20*l.* recovered in a suit originally brought for a debt not amounting to that sum, upon a suggestion that the proceeding was in fraud of the 7 & 8 Vict. c. 96, s. 57. *Joseph v. Buxton*, 1 C. B. 221. See *Hopkins v. Freeman*, 13 M. & W. 372.

And see *Husband and Wife*.

#### FINES AND RECOVERIES ABOLITION.

1. *Married woman*.—*Conveyance*.—The con-

currence of the husband in a conveyance by his wife of her separate property, under the 3 & 4 W. 4, c. 74, s. 91, will be dispensed with, where the parties are living apart by mutual consent, and the husband refuses to join in the execution unless part of the purchase money is paid to him. *In re Sprah Woodcock*, 1 C. B. 437. See *Murfin's case*, 4 Man. & Gr. 635; *ex parte Murphy*, 5 Scott, N. R. 166.

2. *Acknowledgment*.—The Court of Common Pleas allowed a commission for taking the acknowledgment of a deed by a married woman at *Sidney*, in *New South Wales*, to go out with a blank for her christian name. *In re wife of George Apperton*, 1 C. B. 447.

3. *Acknowledgment*.—Upon an acknowledgment of conveyance by a married woman, taken in a township in Pennsylvania, the court, in lieu of a notarial certificate, received a certificate of an officer describing himself as "the prothonotary and clerk of the Court of Common Pleas in and for the Centre County, Pennsylvania," it being sworn that there was no notary public within eighty miles of the place. *Way v. Campbell*, 6 M. & G. 1046.

#### HUSBAND AND WIFE.

*Execution*.—In an action *baron and feme* for a libel on the *feme*, the verdict was against the plaintiffs, and judgment thereon. A *ca. sa.* for the costs was issued against the baron alone. A *ca. sa.* was afterwards issued against both plaintiffs. The baron, who was in custody upon another suit, was charged in *execution* on the first *ca. sa.*, and was afterwards discharged by order of the insolvent court. The *feme* was afterwards taken in execution on the second *ca. sa.*, but was discharged by the judge, upon an affidavit that she had no separate property.

*Held*, that the second *ca. sa.* was not irregular. *Quære*, whether there was error in the writ *Quære*, also, whether the plaintiffs had any remedy by *audita querela*. *Newton v. Rowe*, 7 M. & G. 329.

Cases cited: *Mayo v. Coghill*, Cro. Car. 406; *Percy v. Bradolf*, Cro. Eliz. 381; *Hales v. Whyte*, Cro. Jac. 203; *Wood v. Suckling*, ib. 459; *Pitts v. Meller*, 2 Stra. 1167; *Finch v. Dubbin*, ib. 1237; *Longstaff v. Raja*, 1 Wils. 149; *Cassidy v. Stewart*, 2 M. & G. 437; *Taylor v. Ld. Stuart de Rothessay*, 4 M. & G. 398; *Davis v. Earl of Lichfield*, 1 Dowl. N. S. 365; *Houlditch v. Earl of Lichfield*, 4 M. & G. 770; *Raynes v. Jones*, 9 M. & W. 184; 1 Dowl. N. S. 373; *Hond v. Matthews*, 2 Dowl. P. C. 149; *Sparkes v. Bell*, 8 B. & C. 1; 2 Mann. & Ryl. 124; *Asene v. Fuliambe*, Cro. Eliz. 233.

#### IRREGULARITY.

1. Where a defendant, upon being arrested in 1845, upon a writ of *capias*, issued under the 1 & 2 Vict. c. 110, s. 3, was served with a copy of a writ of summons, tested in 1840, and directed to the defendant in another county than that in which the arrest took place; and also with a copy of the writ of *capias*, which was without date, and directed "To the — greeting." *Held*, that the defendant was entitled to

be discharged out of custody, and that he need not make it a part of the rule that the writs or the copies of the writs should be set aside.

It is not necessary in a rule nisi to set aside proceedings for irregularity, to specify the grounds of irregularity on which the party relies. *Reanne v. Bruce*, 2 D. & L. 946.

Cases cited: *Ireland v. Berry*, 1 D. & E. 866; *Reg. v. Sheriff of Montgomeryshire*, 1 Dowl. 388, N. S.; S. C. 9 M. & W. 448; *Stevenson v. Castle*, 1 Chit. Rep. 349; *Popkins v. Smith*, 7 Bing. 434; S. C. 5 M. & P. 519; *Sutton v. Burgess*, 1 C. M. & R. 770; S. C. 3 Dowl. 489; *Plock v. Pacheco*, 9 M. & W. 342; S. C. 1 Dowl. 380, N. S.; *Bilton v. Clapperton*, 9 M. & W. 473; S. C. 1 Dowl. 386, N. S.; *Galloway v. Bleadon*, 1 M. & G. 247; S. C. 1 Scott, N. R. 170; *Kirk v. Dolby*, 8 Dowl. 766; S. C. 6 M. & W. 636; *Brooke v. Snell*, 8 Dowl. 370; *Hanson v. Shackleton*, 4 Dowl. 48; *Shearman v. McKnight*, 5 Dowl. 572; *Nicol v. Boyne*, 2 Dowl. 761; S. C. 10 Bing. 339; 3 M. & Scott, 810; *Barker v. Weedon*, 2 Dowl. 707; S. C. 1 C. M. & R. 396; 4 Tyr. 860; *Starr v. Mount*, 2 Dowl. 417; *Lakin v. Watson*, 2 Cr. R. & M. 685; S. C. 2 Dowl. 633; *Ilyfield v. Street*, 70 Bing. 27; S. C. 3 M. & Scott, 406; 2 Dowl. 739.

2. On the 23rd of April, a notice of declaration and demand of plea was served, on the 8th of May, the defendant moved to set aside the notice, on the ground that it did not state within how many days the defendant was to plead. *Held*, the plaintiff having signed judgment in the mean time, that the application was too late. *Ramme v. Duncombe*, 7 M. & G. 425.

#### JUDGMENT AS IN CASE OF A NONSUIT.

1. Where a cause was set down for trial, at the sittings in Easter Term, and by consent made a remanet to the sitting after Trinity Term, when the plaintiff withdrew the record; it was held that the defendant might move for judgment as in case of a nonsuit. *McIntyre v. Sewers*, 2 D. & L. 896.

Cases cited: *Brown v. Rudd*, 1 Dowl. 371; *Gilbert v. Kirkland*, 1 Dowl. 158; *Gadd v. Bennett*, 2 B. & A. 709; *Burton v. Harrison*, 1 East, 346.

2. Where a rule for judgment, as in case of a nonsuit, had been discharged upon a peremptory undertaking, and the plaintiff drew up the discharging the rule, but did not serve it, and the defendant omitted to draw it up, and afterwards obtained a rule absolute for judgment, as in case of a nonsuit, the court set aside the last rule. *Knight v. Smith*, 6 M. & G. 1016. See *Gingell v. Bean*, 1 M. & G. 50, 1 Scott, N. R. 153; *Ib.* 1 M. & G. 555, 1 Scott, N. R. 390.

3. A rule for judgment, as in case of a nonsuit, was discharged with costs, where the plaintiff had withdrawn the writ of trial, owing to the absence of a material witness, occasioned by the defendant's attorney. *Appleyard v. Todd*, 6 M. & G. 1019. See *Jenkins v. Charily*, 2 Dowl. P. C. 197; *Watkins v. Giles*, 4 Dowl. P. C. 14.

4. Where, after issue joined, and notice of

trial given for the sittings after Easter Term, the cause was made a remanet by consent to the sittings after Trinity Term, when the plaintiff withdrew the record: *Held*, that the defendant was entitled to move for judgment as in case of a nonsuit. *McIntyre v. Somers*, 14 M. & W. 102.

Cases cited: *Denman v. Bull*, 11 Moore, 443; 3 Bing. 499; *Brown v. Rudd*, 1 Dowl. P. C. 371; *Newburn v. Langley* 3 T. R. 1; *Gadd v. Bennett*, 2 B. & Ald. 709; *King v. Pippet*, 1 T. R. 492; *Burton v. Harrison*, 1 East, 346.

#### JUDICIAL NOTICE.

*Laches*.—A writ of summons commanded the defendant to enter an appearance, "at the suit of Henry Walker & Co.;" and that in default, &c., "the said Henry Walker and Co. may cause an appearance to be entered for you." It was indorsed, "the plaintiff claims," &c. *Held*, that the writ was irregular, as the court could not judicially take cognizance that "Walker and Co." was not the name which the plaintiff bore.

Where an order of a judge to set aside a writ of summons, served on the 4th of April, was made a rule of court on the 15th of April, the first day of term, and on the same day a notice was served on the defendant's attorney, that the plaintiff intended to apply to the court to rescind the judge's order as soon as counsel could be heard, and accordingly, a rule nisi was moved for and obtained on the 23rd: *Held*, that the application was sufficiently in time. *Walker v. Parkins*, 2 D. & L. 982.

Cases cited: *Smith v. Crump*, 1 Dowl. 519; *Stevenson v. Thorn*, 2 D. & L. 280; S. C. 13 M. & W. 149; *Sarjant v. Gordon*, 7 D. & R. 253; *Jowett v. Charnock*, 6 M. & S. 45; *Morley v. Law*, 2 B. & B. 34; S. C. 4 Moore, 369; *Summer v. Batson*, 11 Moore, 39; *Mayor of Stafford v. Bolton*, 1 B. & P. 40; *Scott v. Seams*, 3 East, 111.

#### MARRIED WOMAN.

See *Fines and Recoveries*.

#### NEW TRIAL.

See *Trial*, new.

#### PATENT.

Where an action is brought to try the validity of a patent, the court will not, except under peculiar circumstances, order the trial to be postponed till a *scire facias* brought to repeal the same patent has been disposed of. *Muntz v. Foster*, 6 M. & G. 1017. See *Walton v. Bateman*, S. C., not S. P., 3 M. & G. 773, 4 Scott, N. R. 397; *Haworth v. Hardcastle*, 10 Bing. 551, 4 M. & Scott, 448.

#### PRISONER.

Notice by a defendant, who has been twelve calendar months in execution for a debt not exceeding 20*l.*, of his intention to apply for his discharge under the 48 G. 3 c. 123, may be served on his attorney, when the residence of the plaintiff cannot be discovered. *Percival v. Russell*, 7 M. & G. 448. See *Wilson v. Mokler*, 1 Dowl. P. C. 549.

## PROCESS.

**Description.**—A writ of summons served in the county of *M.*, but describing the defendant as "of *W.*," in the county of *S.*, but now in the county of *M.*," is irregular. *Downes v. Garbett*, 2 D. & L. 944.

Cases cited: *Hill v. Harvey*, 4 Dowl. 163; S. C. 2 C. M. & R. 309; *Border v. Levi*, 3 Dowl. 150; S. C. 1 Bing. N. C. 362; 1 Scott, 270; *Ward v. Watt*, 5 Dowl. 94; *Margetson v. Tugghes*, 5 Dowl. 9; *Cotton v. Sawyer*, 2 Dowl. 310, N. S.; S. C. 10 M. & W. 328; *Simpson v. Ramsay*, 5 Q. B. 371; S. C. 1 D. & M. 396; *Stevenson v. Thorne*, 2 D. & L. 230; S. C. 43 M. & W. 149; *Jelks v. Fry*, 3 Dowl. 37; *Norman v. Winter*, 7 Dowl. 304; S. C. 5 Bing. N. C. 279; 7 Scott, 251.

## PROHIBITION.

**Slander.**—When a suit is instituted in the Spiritual Court for defamation, and the defamatory words are libelled as forming one article of charge, and the sentence appears, on the face of it, to have proceeded upon all the words complained of, a prohibition will go, if part of the words contain imputations for which an action at common law would lie, though other parts contain matter which is properly of ecclesiastical cognizance.

If there be a rule that in cases of defamation the Spiritual Courts have concurrent jurisdiction with the temporal where a spiritual person is aggrieved, it applies only where the party is affected in his ecclesiastical character. Not, therefore, where a clergyman is defamed as having indecently assaulted a woman on the highway. *Evans v. Gwyn*, 5 Q. B. 844.

Cases cited: *Ex parte Mary Evans*, 2 Dowl. P. C. N. S. 726; *Full v. Hutchins*, 2 Cowp. 422; *Churchwardens of Market Bosworth v. Rector of Market Bosworth*, 1 Ld. Ray. 435; *Stainbank v. Bradshaw*, note (c) to *French v. Trask*, 10 East, 349; *Hart v. Marsh*, 5 A. & E. 591; *Carlsake v. Mapledoram*, 2 T. R. 473; *Ex parte Smyth*, 3 A. & E. 719; *Cole v. Corder*, 2 Phill. Ecc. Rep. 106; *Sweetapple v. Jesse*, 5 B. & Ad. 27; *West v. Smith*, 4 Dowl. P. C. 703; *Roberts v. Pain*, 3 Mod. 67; *Slander v. Smallbrooke*, 1 Lev. 138; *Evans v. Brown*, 2 Ld. Raym. 1101; *Cranden v. Walden*, 3 Lev. 17; *Drake v. Drake*, 1 Roll. Ab. 58; *Argyle v. Hunt*, 1 Stra. 187; *Harris v. Butler*, note to *Crompton v. Butler*, 1 Hag. Cons. Ca. 463; *Hollingshead's case*, Cro. Car. 229; *Loockey v. Dangerfield*, 2 Stra. 1108; *Carlsake v. Mapledoram*, 2 T. R. 473; *Bloodworth v. Gray*, 7 Man. & G. 334; *Hart v. Marsh*, 5 A. & E. 591; *Cucko v. Starre*, Cro. Car. 285; *Carlsake v. Mapledoram*, 2 T. R. 473; *Meller v. Herbert*, 1 Sid. 404; *Hart v. Marsh*, 5 A. & E. 591; *Full v. Hutchins*, 2 Cowp. 422; *Cranden v. Walden*, 3 Lev. 17; *Thayer v. Eastwick*, 4 Bur. 2032; *Power v. Shaw*, 1 Wils. 62; *Hart v. Marsh*, 5 A. & E. 591.

## REPLICATION.

To an action for work and labour, &c., the defendant pleaded, that the action was for work and labour as an attorney, and that no signed bill had been delivered pursuant to the statute: *Held*, on demurrer, that the replication *de inju-*

*rid* was improper, *Simons v. Lloyd*, 2 D. & L. 981. See *Salter v. Purchell*, 1 Q. B. 209; S. C. 1 G. & D. 693; *Basan v. Arnold*, 6 M. & W. 559; S. C. 8 Dowl. 356.

## RIGHT TO BEGIN.

See *Insurance*, p. 361, *ante*.

## RIGHT, WRIT OF.

See *Writ of Right*, *post*.

## SERVICE.

1. **Notice.**—*Semble*, that service of notice of trial on a person who called herself the house-keeper of the house in which the offices of the defendant's attorney are situate, she stating that she was authorized to receive papers (which the party serving the notice believed to be true), and promising to deliver the notice to the attorney, is sufficient. *Peddle Pratt*, 6 M. & G. 950.

Cases cited: *Kent v. Jones*, 3 Dowl. P. C. 210; *Fry v. Mann*, 1 Dowl. P. C. 419; *Dodd v. Drummond*, ib. 381; *Stout v. Smith*, ib. 506; *Strutton v. Hawkes*, 3 Dowl. P. C. 25; *Brown v. Wildbore*, 1 M. & G. 267; 1 Scott, N. R. 159; 8 Dowl. P. C. 592.

2. **Writ.**—A statute incorporating a company for making a railway in Ireland, enacted, that personal service of process upon the clerk or secretary, or leaving the same at the office of the company, or of a secretary or clerk, or delivering the same to an inmate at such office, or at the last or usual place of abode of the secretary or clerk, or in case the same respectively should not be found or known, then personal service upon any agent or officer of the company, "or on any one director of the company," &c., "should be deemed good and sufficient service." *Held*, that personal service of a writ of summons upon a director in England was null and void. *Evans v. the Dublin and Drogheda Railway Company*, 2 D. & L. 866. See *Ferguson v. Mahon*, 11 A. & E. 179; S. C. 3 P. & D. 143.

## SLANDER.

See *Prohibition*.

## STAYING EXECUTION.

See *Execution*.

## SUNDAY.

In the construction of the rule for the delivery of paper books to the judges before argument, Sunday is to be counted as one of the four days between the delivery of paper books and the day of argument, except it is the last day. *Hodgins v. Hancock*, 14 M. & W. 120.

## NEW TRIAL.

**Insufficiency of damages.**—Case for an injury to the plaintiff's reputation, by the sale by the defendant of gun locks of an inferior fabric, with the name of the plaintiff stamped thereon. The jury having returned a verdict for the defendant, upon an issue on damages, *ultra* 5*l.*, paid into court, on the ground that the sum

paid into court covered the pecuniary damage actually sustained by the plaintiff, the Court of Common Pleas, on an application for a new trial, declined to interfere. *Manton v. Bales*, 1 C. B. 444.

#### TRIAL, WRIT OF.

1. A writ of trial cannot issue under 3 & 4 W. 4, c. 42, s. 17, where the sum indorsed on the writ exceeds 20*l.*, although a sum less than 20*l.* is claimed by the particulars. And the court will not amend the writ, by reducing the sum indorsed to the amount mentioned in the particulars, but will set aside the writ. *Goslin v. Cotterell*, 14 M. & W. 71. See *Frodsham v. Round*, 4 Dowl. P. C. 569.

2. Where the amount indorsed on a writ of summons exceeds 20*l.*, a judge has no jurisdiction to order a writ of trial, notwithstanding the sum claimed by the particulars of demand is less than 20*l.*

In such cases the judges have resolved not to amend the writ. *Goslin v. Cotterell*, 2 D. & L. 893. See *Frodsham v. Round*, 4 Dowl. 569.

3. The issue, as set out in a writ of trial, stated the suing out of a former writ of summons, to meet a plea of the statute of limitations. The plaintiff having obtained a verdict, upon an issue taken on the accrual of the action within six years, the court refused to grant a new trial, upon an affidavit that no such writ had ever been returned, and that the continuances had been entered on the roll, and that the issue delivered contained no notice of a former writ. *Harper v. Phillips*, 7 M. & G. 397.

#### VARIANCE.

Where the defendant was described in a writ of capias, issued under the 1 & 2 Vict. c. 110, s. 3, as "Mortlock," and in the copy served upon him as "Mortlake," the Court of Queen's Bench refused to discharge him out of custody, on the ground of the variance. *Macdonald v. Mortlock*, 2 D. & L. 963.

Cases cited: *Smith v. Pennell*, 2 Dowl. 654; *Hodgkinson*, 1 A. & E. 553; *S. C.* 3 N. & M. 564; 2 Dowl. 535; — *v. Runnole*, 1 Chit. Rep. 639, n.

#### WARRANT OF ATTORNEY.

1. *Attestation*.—A warrant of attorney was attested by A., an attorney introduced to the defendant by the plaintiff's attorney, the defendant thereupon naming A., and requesting him to attend on his behalf, by repeating after the plaintiff's attorney the proper form of words, which were read by the latter from the body of the instrument: *Held*, that the attestation was good. *Walton v. Chandler*, 1 C. B. 306.

Cases cited: *Taylor v. Nicholl*, 8 Dowl. P. C. 242; 6 M. & W. 91; *Hale v. Dale*, 8 Dowl. P. C. 599; *Barnes v. Pendrey*, 7 Dowl. P. C. 747; *Gripper v. Bristow*, 6 M. & W. 807; 8 Dowl. P. C. 797.

2. *Judgment in Vacation*.—A warrant of attorney given in Trinity Vacation, 1838, to appear for the defendant, "as of Trinity Term last, Michaelmas Term next, or any other subsequent term, and then to receive a declaration

for him, &c., and thereupon to confess, &c., was held to be no authority for entering up judgment in a subsequent vacation.

Judgment was entered up on the 30th of November, 1843, upon a warrant of attorney: on the 4th of December, a *fi. fa.* issued, under which defendant's goods were seized and sold. On the 18th of December a fiat issued against the defendant, upon an act of bankruptcy (of which the plaintiff had no notice,) committed on the 28th of November: the adjudication took place on the 21st of December; and on the 3rd of January, 1844, assignees were chosen. On the 16th of January, the solicitors to the fiat were aware that the plaintiff's judgment was founded on a warrant of attorney: *Held*, that a motion made on the first day of Easter Term, 1844, to set aside the judgment, on the ground that it was not signed in pursuance of the authority given, was too late. *Bute v. Lawrence*, 7 M. & G. 405.

Cases cited: *Cobbold v. Chilver*, 7 M. & G. 62; 4 Scott, R. N. 678; 1 Dowl. N. S. 726; *Coulson v. Clutterbuck*, 2 Dowl. N. S. 391; *Rayment v. Smith*, 1 Dowl. & Lownd. 166; *Weedon v. Garcia*, 2 Dowl. N. S. 64; *Bird v. Manning*, 13 Law J., N. S., Q. B. 123; *Webber v. Hutchins*, 8 M. & W. 319; 1 Dowl. N. S. 95; *Esdaile v. Davis*, 6 Dowl. P. C. 465; *Skyring v. Greenwood*, 4 B. & C. 221; 6 D. & R. 401; *Shaw v. Pictou*, 4 B. & C. 715; 7 D. & R. 201.

*Successive executions*.—The defeasance of a warrant of attorney contained an agreement, that no execution or *executions* should be issued upon the judgment entered up thereon until default in the payment of an annuity; but that, in case of default, it should be lawful for the grantee, his executors, &c., to sue out execution or *executions* thereon, not saying, "from time to time." The defeasance also contained a proviso for entering satisfaction after the decease of the grantor, and full payment of the annuity up to the day of his decease: *Held*, that the grantee was not restrained by this defeasance from issuing successive executions for arrears. *Cuthbert v. Dobbin*, 1 C. B. 278.

#### WRIT OF RIGHT.

Appearance of the knights to choose the recognitors for the trial of a writ of right. *Davies*, dem. *Loundes*, ten. 1 C. B. 435; *S. C.* 6 Man. & Gr. 474; 7 Scott, N. R. 141. See *Lord Windsor v. St. John*, Dyer, 79, b., 103, 270, b.; *Booth*, Real Actions, 97; *Brownlow's Writs Judicial*, p. 143; *Glanvill*, lib. 2, c. 12.

#### WRIT OF TRIAL.

See *Trial*.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Kolls Court.

NEW ORDERS.—AMENDING BILL.—TITLE OF ANSWER.

*The eight days allowed by the 39th sect. of the 16th Order and 71st Order of May, 1845,*

apply only to the case of an amendment made after answer.

The clerks of records and writs will receive an answer to a bill which has been amended, although such answer purports to be an answer to the original bill only, provided no answer to the original bill has been put in by the party so answering.

THIS was a motion for leave to file a traversing note at the expiration of eight days, unless within that time the defendants, against whom the motion was made, should have filed their answers. The bill was filed on the 24th of July, 1845. Appearance was entered by the defendants, against whom the motion was made on the 28th, so that the time for answering expired on the 22nd of September. The defendants, against whom it was proposed to file the traversing note, were resident abroad, and the principal reason alleged for the application was the delay thus occasioned, and the impossibility of enforcing an answer. It was stated, that the answers of the defendants in question were lying at Mayence, ready to be brought over whenever a messenger could be found. The bill had been amended on the 18th Feb., but a notice had been given to the defendants that no answer was required to the amendments: and it was therefore contended, that the case came under the 71st of the new orders, and the 38th sect. of the 16th, and that eight days only were allowed to a defendant to put in his answer. It was urged in reply, that these orders applied only to amendments after answer; otherwise the five weeks given by the 14th sect. of the 16th Order would be taken away; and that although the plaintiff might require no answer, it might be important to the defendant to put in an answer, as in this case, where one of the amendments consisted in stating that one of the defendants was insolvent.

Mr. Cairns for the motion.

Mr. Kindersley, Mr. Turner, and Mr. Hall, *contra*.

Lord Langdale expressed a doubt, whether, after a bill had been amended the clerks of the records and writs could receive any answer but one purporting to be an answer to the amended bill, which it was obvious from the dates, that the answer of these defendants, supposing it to be filed in time, could not be. He therefore deferred his judgment until he had obtained information upon that point. It appeared, however, that according to the practice of the clerks of records and writs office, if no answer has been put in, any answer, though not purporting to be an answer to the amended bill, would be received, though after answer had been put in, no other answer would be received but as an answer to the amended bill. However, his Lordship expressed his opinion, that the orders relied on by the plaintiff, applied only to the case of amendments after answer, and therefore refused the motion.

*Rigby v. Pincock.* Feb. 26, 1846.

MOTION TO DISMISS.—AMENDING BILL.

A plaintiff has a right to amend by a motion

order, under the 66th Order of May, 1845, if the answers of all the defendants are not at the time sufficient, although one of the defendants may have acquired a right to move to dismiss under the 114th Order, and may have given notice of a motion to dismiss at the time when the amendment is made.

THIS was a motion to dismiss a bill for want of prosecution, under the following circumstances.—After notice of the motion to dismiss had been given, the plaintiff amended his bill by a common order. The defendant contended, that this order was irregular, and that it ought to have been special.

Mr. Bromhead for the motion:

Mr. Lloyd, *contra*, relied upon the 66th Order, and the 33rd clause of the 16th Order of May, 1845, which he contended were not restricted in their operation by the 114th Order, so as to make a special order for leave to amend necessary, because some one of the defendants might have acquired a right to dismiss.

Lord Langdale said, that he had had occasion to consider the question before, and would mention it the next morning, and then expressed his opinion, that the order to amend was regular. Therefore the motion to dismiss failed.

*Lester v. Archdall.* Feb. 27th and 28th, 1846.

Vice-Chancellor of England.

ENROLLING ORDER.—41 REG. 3, c. 90.

An order enrolled under this act need not be served afresh before it is enforced.

IN this case an order of the Court of Chancery in Ireland had been enrolled, for the purpose of enforcing it in England, and it was a question only whether there was a necessity for a fresh service upon the party of the order in England, before it could be enforced.

Mr. Blount, for the parties who had obtained the order.

The Vice-Chancellor held, that service was not necessary. The parties claimed under the order, and the effect of the enrolment was only to make the order operative in England.

*O'Grady v. Walgram.* March 2, 1846.

BILL FILED WITHOUT AUTHORITY.—FORM OF ORDER TO DISMISS.

THIS was a motion to dismiss a bill filed by a solicitor without sufficient authority. The defendant had not appeared on the motion, and there was a question as to the form of the order for dismissal.

Mr. Stewart contended, that it ought to be a reference to the Master to settle a bond of indemnity against the claims of the defendant, whose costs would primarily fall on the plaintiff.

But Mr. Bethell, who was for the motion, undertaking that the plaintiff would satisfy the defendant, the order was made for a reference to tax the costs, &c. which were directed to be paid by the solicitor.

*Young v. Hopley.* March 2, 1846.

## Queen's Bench.

(Before the Four Judges.)

## INDICTMENT. — DESCRIPTION OF PROSECUTOR.

*In an indictment it is sufficient to describe the prosecutor according to the name by which he is commonly and best known.*

*A foreigner by the name of Charles Frederic Augustus William D'Este, commonly called Duke of Brunswick, who was resident in this country, but was not the reigning prince, was held to be sufficiently described in an indictment, as Charles Frederic Augustus William, Duke of Brunswick and Luneberg.*

THE defendant was indicted and found guilty of publishing a libel against a prince of Brunswick, whose name was Charles Frederic Augustus William D'Este, who was at that time residing in this country, who had been, but was no longer the reigning Duke of Brunswick. The prosecutor was described in the indictment, as Charles Frederic Augustus William Duke of Brunswick and Luneberg.

Mr. Cockburn moved in arrest of judgment, and contended that the prosecutor was not sufficiently described in the indictment. The prosecutor is not the reigning Duke *de facto*, and there is nothing on the record to show that he is a foreign nobleman, and therefore, inasmuch as he seeks the protection of the English law, he must be described according to the law of this country. Peers of Scotland or Ireland, who are not peers of parliament, should be designated by the addition of esquire or armiger, 2 Inst. 667; 2 Hawk. P. C. 62, c. 25, s. 72, and an anonymous case.\* The proper description therefore of the prosecutor would be, Charles Frederic Augustus William D'Este, Esquire, Duke of Brunswick and Luneberg. [Wightman, J. In *Sull's* case<sup>b</sup> the prosecutrix was described, Victory, Baroness Turkheim, and the prosecutrix said, that Baroness Turkheim was her title, and was no part of her proper name, and the judges held the description sufficient.] In *Graham's* case,<sup>c</sup> the court said, the proper description of a peer of Ireland was, James Hamilton, Esquire, Earl of Clanbrassil, in the kingdom of Ireland.

Lord Denman, C. J. At the trial I was much struck with the objection. The authority of Lord Coke goes a great way to show that the description here given of the prosecutor was an imperfect description. The safer way might have been to call the prosecutor by his name, and to add the title or designation of esquire or armiger. I should have thought the objection, although of a technical nature, was entitled to further discussion, had it not been for *Sull's* case, which occurred in 1792. The prisoner was then indicted for stealing certain articles the property of Victory, Baroness of Turkheim; and the prosecutrix said that that was her title, did not form part of her proper name, and

that she was reputed to possess and did possess that title in right of an estate she had received from her father. The court said that all that the law required was certainty to a common intent; and as the prosecutrix had always acted in and been known by the appellation of Baroness Turkheim, and could not possibly be mistaken for any other person, it must be taken to be her name, and that the indictment had named her with sufficient certainty.

The same circumstances exist here. The prosecutor is not the reigning prince, still he is constantly known by this description, and the case I have referred to seems to me a direct authority for saying that he has properly described himself in this indictment. I am therefore of opinion that there ought to be no rule.

Mr. Justice Patteson. I am of the same opinion. In *Sull's* case, the prosecutrix was held to be sufficiently described by the appellation of Baroness Turkheim, that being the name by which she was commonly known, although it formed no part of her proper name. It might have been contended there, as it has been here, that the title not being one of the English peerage, that the rule applicable in such cases must apply.

Mr. Justice Coleridge. I take the principle to be, that the prosecutor or prosecutrix of an indictment should be described according to the name by which he or she is best known. In *Sull's* case, the court said that all the law required was certainty to a common intent; but it appears to me that the description of D'Este, Esquire, would not have given the same information to the world as the one adopted in this indictment.

Mr. Justice Wightman. I am of the same opinion. *Sull's* case underwent considerable discussion, and must be taken to be an authority on the subject.

Rule refused.

*The Queen v. Gregory.* Hilary Term, 1846.

## PRACTICE.

*Under the new rules of pleading, (Hilary Term, 4 W. 4,) a summons was taken out before a judge at chambers, for the plaintiff to show cause why one of the counts in a declaration should not be struck out; the summons was dismissed; and application for the same purpose was then made to this court.*

*Held, that the court would not entertain such an application, because the original jurisdiction is given to a single judge, and there is no appeal in such case to the full court.*

By the rules of pleading (Hilary Term, 4 W. 4,) it is provided that several counts in a declaration shall not be allowed, unless a distinct subject-matter of complaint is intended to be established in respect of each. And where more than one count shall have been used, in apparent violation of the preceding rule, the opposite party shall be at liberty to apply to a judge, who shall order accordingly.

In a declaration in assumpsit, the plaintiff had inserted several counts, in apparent viola-

\* *Salk.* 45.

<sup>b</sup> *Leach.* C. C. 1006.

<sup>c</sup> *Ib.* 609.



tion of this rule of pleading, and a summons was taken out before Mr. Justice Williams, calling on the plaintiff to show cause why one of the counts in the declaration should not be struck out, but the learned judge dismissed the summons, and refused to make any order.

Mr. Addison had obtained a rule nisi, calling on the plaintiff to show cause why one of the counts in the declaration should not be struck out.

Sir John Bayley now showed cause.

The court has no jurisdiction to entertain this application. Where more than one count is used, in apparent violation of the rule of court, the party is at liberty to apply to a judge at chambers, but in case he refuses to interfere, then the rule gives no appeal to this court.

Mr. Addison in support of the rule.

The rule of court directs, that application shall be made to a single judge, but it has never yet been held, that where such judge refuses to interfere, that this court has no jurisdiction to make an order. [Mr. Justice Wightman referred to a case of *Morse v. Appleby*, where a similar application was made to the Court of Exchequer, and Mr. Baron Alderson said, that if a judge made an erroneous order, the right of appeal immediately arose; but in this case the court has not the same power that a judge has. Where a judge at chambers is satisfied that the parties intend to rely on all the counts or pleas, he indorses accordingly. This court has no power to make such indorsement, which shows there cannot be an original application to this court.] That appears to be the dictum of one judge, and not a decision of the full court.

Lord Denman, C. J. In the rule of court the original jurisdiction is given, not to the court, but to a single judge, and no appeal is given. A judge has power to indorse on the summons what he thinks ought to be done, but the court has no power to make such indorsement. I think therefore that the court has no jurisdiction to entertain this application.

Patteson, Coleridge, and Wightman, Je, concurred.

Rule discharged.

*Slack v. Clifton.* Hilary Term, 1846.

#### Queen's Bench Practice Court.

##### CERTIORARI TO REMOVE INDICTMENT FOR FELONY.

*A certiorari to remove an indictment for felony will not be granted upon an affidavit alleging that the county in which the venue has been laid, is generally opposed to the politics professed by the defendant, and that his political opinions and position have rendered him an object of dislike in the county, and subjected him to abuse and threats of violence.*

ONE LYNES was to be tried for forgery at the forthcoming assizes for Buckinghamshire, and

Shee, Serjeant, now moved for a rule nisi to remove the indictment into the Court of Queen's Bench, in order to its being tried in another

county, upon an affidavit stating that the county of Buckingham was notorious for strong conservative politics; that the politics of the accused being of a directly opposite character, he had given much offence to the inhabitants, and had become generally disliked; that he had been engaged as agent for the Anti-Corn-Law League, in that county; that during the performance of his duties in that capacity, he had been frequently assailed by the farmers, and threatened with violence; and that it would be impossible to summon a jury from the county who would not be greatly prejudiced against him. Under these circumstances, it was submitted, that as Buckinghamshire was a small county, there appeared to be some ground for apprehending that the accused might not have a fair trial. In *Res v. Holden*, 5 B. & Ad. 347, Lord Denman said, "It is true that the court might, by granting such a rule as this, expose itself to frequent solicitations of the same kind; still, if I thought it necessary for the purpose of securing a fair trial, I should certainly be disposed to grant this application."

Williams, J. I cannot pay so ill a compliment to a county of the respectable dimensions of Buckinghamshire as to assume for an instant that by reason of its political predilections, a man may not have a fair trial therein. Party feeling and political prejudices there may be, but I do not believe that either the one or the other will have any influence on the minds of those persons by whom the defendant may be tried.

Rule refused.

*Ex parte Lynes.* Hilary Term, Jan. 28, 1846.

#### Exchequer.

##### RULE TO DISCONTINUE.—STAY OF PROCEEDINGS.—JUDGMENT AS IN CASE OF A NONSUIT.

*A rule to discontinue does not operate as a stay of proceedings; therefore, where the plaintiff served a rule to discontinue, with an appointment to tax the costs, and on the following day the defendant moved for and obtained a rule absolute for judgment as in case of a nonsuit, for not proceeding to trial pursuant to a peremptory undertaking: Held, that the defendant was regular.*

ON Saturday the 10th January, the plaintiff obtained a rule to discontinue, on payment of costs. The rule was served about 12 o'clock on the same day, together with an appointment to tax the costs. On the following Monday, the defendant obtained a rule absolute for judgment as in case of a nonsuit, for not proceeding to trial pursuant to a peremptory undertaking. A rule nisi had been obtained to set aside the latter rule, against which

Bramwell showed cause, and argued, that the rule to discontinue did not operate as a stay of proceedings.

The court called on Hawkins to support the rule. After the appointment to tax, it was irregular to move for the rule absolute for judgment as in case of a nonsuit. In *Casper v. Holloway*, 1 Hodges, 76, the plaintiff served a

rule to discontinue, and the costs were taxed but not paid, and it was held, that the defendant could not move for judgment as in case of a nonsuit. The practice is altered by the rule of Hilary Term, 2 W. 4, c. 106, which orders, that a rule to discontinue "shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent, that if they are not paid within four days after taxation, the defendant shall be at liberty to sign a non pros." The defendant is not justified in taking a circuitous mode of putting an end to the action, when the rule to discontinue would have had the same effect. Even under the old practice, when the costs were taxed and judgment of discontinuance entered up, it related back to the day when the rule for discontinuance was obtained. *Brant v. Peacock*, 1 B. & C. 649. In *Whitmore v. Williams*, 6 T. R. 765, the court only decided, that the rule to discontinue did not of itself put an end to the suit, and that there should have been an appointment to tax the costs. At all events, the defendant should not have moved for judgment as in case of a nonsuit, until it was known what steps would be taken on the discontinuance. *Tiley v. Hodgson*, 2 D. & L. 655, will govern the present case; there a copy of a writ of summons having been served on the 6th of January, the plaintiff on the 13th received notice of a rule nisi to set it aside for irregularity, and that the rule would be drawn up on the opening of the office on the following morning. In the afternoon of the 14th, the plaintiffs entered an appearance and filed his declaration, and two hours afterwards the rule was served; and it was held that the defendant was not precluded from objecting to the writ.

*Pollock, C. B.* That case is very different from this; for there a rule was pronounced by the court, and if the party had been present in court to hear it, it would have been just as binding as if a copy had been served. The Master reports to us that a rule to discontinue on payment of costs is no stay of proceedings; consequently the defendant was perfectly regular, and the present rule must be discharged.

*Parke, B.* There was nothing to prevent the defendant from moving for judgment, as in case of a nonsuit. At the time he made that application there was only a rule to discontinue on payment of costs. It is true that the rule contains an undertaking to pay those costs, but the defendant was not bound to accept that undertaking, and might proceed to enforce his right to judgment. In *Tiley v. Hodgson*, the only question was, whether the application was in time, and the court held that it was, as the service of the rule was delayed by the press of business. In this case the plaintiff has no right to take advantage of a new undertaking to pay the costs, when he has already broken his undertaking to try the action.

*Platt, B.*, concurred.

Rule discharged.

*Baker v. Jupp.* Hilary Term, 30th Jan. 1846.

### Court of Bankruptcy.

*Semble.* That a protection granted under the stat. 7 & 8 Vict. c. 70, s. 7, is not a sufficient answer to a summons issued under the stat. 8 & 9 Vict. c. 127.

*J. Dove* (a clerk in the Audit Office at Somerset House) being unable to meet his engagements with his creditors, petitioned this court, praying for protection from arrest under the stat. 7 & 8 Vict. c. 70, and Mr. Commissioner *Shepherd*, upon the examination of his petition, granted him a protection from arrest under the provisions of section 7, till some day in December, 1845, which protection was afterwards enlarged by the same learned commissioner, from time to time, until the 3rd March, 1846, and a meeting of his creditors directed to be convened according to section 2.

In the month of February, 1846, a creditor of the petitioner, who had previously obtained a judgment against him, for a debt under 10*l.*, issued a summons under the Small Debts Act, (8 & 9 Vict. c. 127,) calling upon the debtor to appear before Mr. Commissioner *Holroyd*, at the bankruptcy court, on the 18th day of February, 1846, to answer such questions as may be put to him, touching the not having paid the said judgment debt.

Upon his appearance to this summons, the debtor stated, that he had a salary of 185*l.* per annum, but that he had proposed to his creditors in the petition filed under the stat. 7 & 8 Vict. c. 70, to pay to a trustee appointed under the provisions of the act, the whole of his income *ultra* 100*l.* per annum, until his debts were paid, and that a majority of his creditors had assented to this proposal, at a meeting held under the provisions of the act last cited. He also produced the order of protection, signed by Mr. Commissioner *Shepherd*, and submitted that he was protected by that order from the operation of the stat. 8 & 9 Vict. c. 127.

On the part of the summoning creditor, the learned commissioner's attention was directed to the 3rd section of the act 8 & 9 Vict. c. 127, which declares and enacts, "that no imprisonment under this act shall in any wise operate as a satisfaction or extinguishment of any debt or demand;" and it was urged upon him, that it appeared from the debtor's own statement that his circumstances were such as to enable him to pay so small a debt.

Mr. Commissioner *Holroyd* said, that as the question submitted to him was one of the first impression, he should like, before deciding it, to consult his brother commissioners. On the next day the learned commissioner stated, that he had consulted Mr. Commissioner *Fonblanque*, and they agreed in opinion that the arrangement with creditors contemplated by the stat. 7 & 8 Vict. c. 70, was not meant to comprehend small debts which fell under the operation of the 8 & 9 Vict. c. 127. Under the Debtors and Creditors Arrangement Act, it was only creditors whose debts exceeded 20*l.*, who were entitled to vote at the meetings of creditors. It would rather seem, therefore, not to have

been the intention of the legislature, that very small debts should have been subject to the arrangement which that act gave facilities for effecting. Moreover, the order of protection now produced by the debtor, was an extended order, and it had been decided by Mr. Justice Patteson, in a case in the *Bank Court*, that the commissioners had no power to extend a protection under the 7th sect. of the 7 & 8 Vict. c. 70. If that decision were correct, the order now produced was a nullity. Under these circumstances, he was of opinion, that the debtor must arrange to pay the present debt, or else an order would issue to commit him to prison, for a period not exceeding forty days, under the 8 & 9 Vict. c. 127, s. 1.

It was finally agreed and ordered, that the debt and costs should be paid on the 12th April next, when the debtor's quarter's salary was payable.

*In re Doe.* 20th Feb. 1846.

#### ARRANGEMENT OF BUSINESS AT THE JUDGES' CHAMBERS:

*Common Pleas Chamber, March 2, 1846.*

The following regulations for transacting the business of these chambers will be strictly observed until further notice:—

1. *Original summonses* only must be placed on the file.

2. *Summonses adjourned* by the judge will be heard at ten o'clock precisely, according to their numbers on the adjournment file, and those not on that file previous to the numbers of the day being called, will be placed at the bottom of the general file.

3. *Ex parte applications*, (except as mentioned below,) will be disposed of immediately after the adjourned summonses.

4. *The summonses of the day* will be called at five minutes past ten o'clock, numbered, and heard in their regular order.

5. One summons only to be attended in the judges' room at the same time, whether by counsel or otherwise.

6. *Counsel at one o'clock.* The name of the cause to be put on the counsel file, and heard according to number. If the parties are not ready they will be passed over.

7. *Affidavits upon ex parte applications* (except for orders to hold to bail) must be left, and the orders applied for the next day; such affidavits to be properly indorsed with the names of the parties, the nature of the application, and the names of the attorneys.

8. All affidavits produced before the judge must be indorsed and filed.

#### BY ORDER.

[This order, though made in the Common Pleas, will, we presume, apply to all the courts: the learned judge who has made it, being the vacation judge.—Ed.]

\* *Vide Maseman v. Davis*, Orig. Rep. *ante* p. 294.

#### NOTES OF THE WEEK.

##### SETTLED ESTATES DRAINAGE ACT.

THE Lord Chancellor and the Master of the Rolls have just made the requisite orders for regulating the proceedings under the 8 & 9 Vict. c. 56, for enabling the owners of settled estates to defray the expenses of draining the same by way of mortgage. We shall give the orders in our next number.

##### RAILWAY LIABILITIES.

It has been decided in the case of *Walstab v. Spottiswoode*, before the Lord Chief Baron, on the 27th Feb. that a party who has paid the deposit on shares in a projected railway company, may recover back the amount, without any deduction for expenses; part only of the shares having been taken, and the scheme abandoned, at least for the present. See *Nockels v. Crosby*, 3 B. & C. 814. The integrity of the committee was not involved in the case, and it was stated that the plan would be proceeded with in the next session.

#### PROCEEDINGS IN PARLIAMENT.

##### House of Lords.

##### NEW BILLS.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—In Committee. See the bill, p. 354, *ante*. Lord Dacre.

Duties of Constables, &c.—In Select Committee: See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor.

Administration of Criminal Justice: See the bill, p. 377 *ante*. Lord Denman.

Punishment for deterring Prosecutors, Witnesses, &c.—For 2nd reading. Lord Denman.

##### House of Commons.

##### NEW BILLS.

Roman Catholics Relief.—For 2nd reading. See the bill, p. 402, *ante*. Mr. Watson.

Metropolis Buildings.—For 2nd reading. Sir J. Graham. [Under this bill it is intended to appoint a third referee.]

Bequests for Pious and Charitable Purposes.—For 2nd reading. See the bill, p. 353, *ante*. Lord John Manners. On the 2nd reading on the 4th March, this bill was negatived.

#### THE EDITOR'S LETTER BOX.

*New Sheriffs.* We gave the list of sheriffs, undersheriffs, &c., in our last number, so far as then completed. The following announcement has since appeared in the Gazette:—

Her Majesty in council was this day pleased to appoint Daniel Peplow Peplow, of Garnstone, Esq. to be sheriff of the county of Hereford, in the room of John Francis Vaughan of Cowfield, Esq. Feb. 27.

# The Legal Observer.

SATURDAY, MARCH 14, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE NEW CHARITABLE TRUSTS BILL.

THIS bill differs only in two respects from that brought in and abandoned last session. In the first place, the present bill defines the qualifications of the proposed commissioners, which the bill of last year did not. Secondly, the present bill extends the operation of the per centage clause, (by which a charge varying from 3d. to 6d. in the pound is imposed to defray the expense of the intended board,) to all charities subject to the examination, though not to the actual jurisdiction of the commissioners; the plan being to give the board authority to *examine* into all charities great and small, but to limit their *jurisdiction* (that is to say, their power of rectification) to cases in which the annual income shall not exceed 100l. The great city charities therefore, and most of the larger municipal charities throughout the kingdom, will escape the jurisdiction of the board; but they will be required to make yearly returns of their course of administration, showing the state of their accounts and general management. And they will have to submit to any scrutiny that the board may think proper to institute. But if any thing appear wrong in the system of these larger charities, the board can only put the matter in a train to be remedied by the Court of Chancery.

Then as to the qualifications of the three commissioners, (for that is the number fixed upon). The bill says that every person to be appointed a commissioner, shall be “either a person holding the office of Vice-Chancellor or Master in ordinary of the High Court of Chancery, or a person who shall have held either of such

offices, or the office of Chief Justice of the supreme Court of Judicature in Bengal, or a sergeant or barrister in actual practice and of not less than twelve years' standing.” It is pretty evident that one of the Vice-Chancellors has been sounded and found ready to accept the proposed appointment. In all probability Sir J. L. Knight Bruce or Sir James Wigram has agreed to discharge the new duties in addition to his existing ones. Nothing can be more creditable or satisfactory. As to the masters in Chancery we are of opinion that their own functions, adequately performed, are quite enough for them. Let us first see an end put to the delays which have made the masters' offices in Southampton Buildings a reproach to the profession, before we permit the masters to indulge their ardour for extended occupation. We take it for granted that no master emulous of a place in the charity board contemplates additional remuneration in respect of additional duties. We are not sure of this however. But we consider it tolerably certain that the House of Commons will disappoint such golden expectations if they in reality exist.

The qualification of having held the place of Chief Justice in Bengal can only have reference to Sir Edward Ryan, a gentleman whose experience and reputation point him out as in every respect fitted for the proposed office.

There is one thing to be kept in view in following up these appointments. The work will be very considerable. Three commissioners, having no other duties to perform, could do it adequately and satisfactorily. But three commissioners, such as seem to be contemplated by this bill, would prove ere long a failure. We think it most desirable that one of the Vice-Chan-

cellors should be an honorary commissioner. We have no objection to one of the masters in Chancery being another. But we are confident that the third commissioner, whether he is to be Sir Edward Ryan or "a sergeant or barrister of twelve years' standing at the least," will soon be overpowered, if he is to rely on no other aid than that to be afforded by the other two judicial volunteers to whom we have adverted.

While we are on this subject, we may observe that the rejection on the 4th inst. of Lord John Manners' bill to repeal the *mortmain* act is, in our judgment, a topic of congratulation. The act in question, the 9 Geo. 2, c. 36, (improperly though invariably termed the *mortmain act*.) was simply an act preventing gifts of land from being made by languishing and dying persons to purposes of charity, and the foundation and principle of the prohibition was this, that persons in *extremis* are apt to be worked upon, by spiritual influence and by their own terrors, to make devises of their lands often to improper purposes, and almost always to the cruel disherison of their natural relations. If, therefore, a man is disposed to be charitable, the act says let him make his gift deliberately, while he is in sound health and has the full use of memory and understanding. Let him do it in such a way as to show that his gift is sincere, not ostentatious. Let the gift operate to the diminution of his own income in his lifetime. The best evidence that can ordinarily be given of genuine charity is that the donor suffers by the gift. Posthumous charity is often spurious. Wisely therefore has the statute discouraged it. But (so far are we from desiring to repeal this act) that we should wish its provisions to be extended to personal property as well as real estate. There appears to be no good or intelligible reason for allowing a man arrived at the threshold of the other world to make a charitable bequest of personalty, when by the act (founded, as we conceive, on the wisest policy) he is precluded from making a similar devise of real estate. What is sauce for the goose is surely sauce for the gander.

#### CHAMPERTY AS UNDERSTOOD IN COURTS OF EQUITY.

MAINTENANCE (an offence both at common law and by statute) is, says Lord

Coke, "when a man maintains a suit or quarrel to the disturbance or hindrance of right," a definition which would apply to a pretty extensive section of all the litigation agitated in courts of justice. In another place the same great authority tells us that "champerty is the most odious species of maintenance." What then is champerty? The definition is not given in the abstract, but by an illustration, thus—"Champerlers be they who move pleas or suits, or cause them to be moved by their own procurement or by others, and sue at their proper costs to have part of the land in variance, or part of the gains." Hence the word champerty has by a doubtful etymology been said to be derived from *campi partitio*. As if I, knowing that A. had a claim to a certain field, were to say to A. "Go to law about this field, and I will defray the expense, provided you let me have a part of the field as my remuneration." This, according to Lord Coke, would be odious conduct on my part. It would be the worst species of maintenance. The criterion of the mischief sought to be struck at is the stipulation to have a part of the thing recovered. Therefore if I advance money to enable another to carry on a litigation without any agreement or understanding that I am, in the event of success, to have a share of the booty, this will not be maintenance or champerty. So an attorney or solicitor advancing money for his client in an action or suit, is not guilty of maintenance or champerty. Indeed, if he were, very few practitioners would be free from this stain. But an attorney or solicitor cannot stipulate for collateral advantages. He cannot stipulate to have anything beyond his just professional allowances. This was laid down very clearly by Lord Eldon, after reviewing all the authorities, in *Wood v. Downes*, 18 Ves. 120. And that conclusion was deduced by him not only by reason of the principle of maintenance or champerty, but also on the additional ground of the impropriety of such stipulations between parties standing in the relation of solicitor and client.

There is a class of cases (one of which has recently come before Vice-Chancellor Wigram) in which the objection of maintenance or champerty has been taken, but has been overruled on the ground that the party charged has an interest in the subject matter of the litigation. Thus, suppose the right to an estate is in controversy, and I have a mortgage upon it; I am in that case clearly entitled (and very likely when

necessary) to lay out money in supporting the right of the mortgagor. Interest, therefore, in the subject matter is always a recognized defence to the charge of maintenance or champerty.

The case before Vice-Chancellor *Wigram* was that of *Hunter v. Daniell*, which will be found in the last number of Mr. Hare's Reports, p. 420. Several proceedings were pending to determine the title to certain lands between certain persons claiming to be mortgagees thereof, and one party who set up pretensions to a title in fee under a settlement paramount to the mortgages. In this situation, another party claiming to be a subsequent mortgagee, bargained to purchase the interests of the prior mortgagees, a species of contract coming within one of the definitions of maintenance or champerty, which forbids the purchase or obtaining of pretended rights to lands, but which may be entered into by a party having an interest in those lands. "The question here," said the Vice-Chancellor, "is not whether the agreement falls within some of the old definitions of champerty, but whether it amounts to champerty in the sense in which at this day champerty is forbidden by law. The plaintiff, the second mortgagee, has bought in the first mortgage pending the suit, and now openly seeks to have the benefit of the suit and of the proceedings therein. The question is, whether this is lawful or not. On referring to Hawkins' Pleas of the Crown, (vol. 1, p. 456, eighth edition,) I find he has a section on acts of champerty, which he thus heads:—"How far they are justifiable in respect of an interest in the thing at variance." Under this head he says, that the act, *although it be an act of champerty*, is not objectionable wherever there is an equitable interest in the title in dispute. The case of *Findon v. Parker*,\* appears to me to bring down the principle to the present time, that a person having, or believing that he has, an interest in the subject of dispute, and *bona fide* acting in the suit, (for it goes as far as this,) may lawfully assist in the defence of that suit. I think, therefore, that the case before me is not open to demurrer on the ground of champerty."

## POINTS IN COMMON LAW.

### ACTION ON THE CASE FOR DEFACING A HACKNEY COACHMAN'S LICENCE.

AN action of a novel description was

tried at the *nisi prius* sittings in Michaelmas Term last, and has subsequently been brought under the consideration of the Court of Common Pleas.\*

By the stat. 6 & 7 Vict. c. 86, "for Regulating Hackney and Stage Carriages in and near London," the registrar is authorised to grant licences to drivers of hackney carriages, and the proprietors of hackney carriages employing such licenced drivers, are required to retain the licence of every driver employed by them, whilst the driver is so employed, and to enter in proper columns in the licence, the days on which the driver enters and quits the service respectively, together with the name and address of the employer.

The plaintiff (*Hurrell*) obtained a licence under this act, authorising him to act as driver of hackney carriages until the 1st June, 1846, and upon entering into the service of the defendant (*Ellis*), who was a proprietor of a hackney carriage, delivered the licence to the defendant, who retained it until he was about to dismiss the plaintiff from his service. The defendant then, as stated in the declaration, "wrongfully and unjustly wrote in ink in and upon the said licence, certain words purporting to give, and being then intended by the defendant to give, a character of the plaintiff as an unfit and improper person to act as a driver of hackney carriages," by reason of which the licence was defaced and damaged, &c. The plaintiff under these circumstances brought his action on the case, and the defendant pleaded, "Not guilty," and a justification. The jury, however, returned a verdict for the plaintiff, with 7*l.* damages.

The case was brought before the court upon a motion in arrest of judgment, and it was urged, that the declaration did not show that the plaintiff sustained any injury which gave him a legal claim for compensation; or if it did, that the plaintiff had mistaken his remedy in point of form, as the action should have been in trespass, and not in case. On the first point it was contended, that the declaration was bad for not disclosing that the act complained of was done maliciously, whereas it was merely stated that it was done "wrongfully," which was consistent with the fact that it had been done accidentally or by mistake. Then as to the form of action, the licence was the property of the driver, and though properly placed in the hands of the defendant, if he defaced or injured it, that circumstance revested the property and possession in the driver, in the same manner as the right of possession was altered where a party to whom a pack-

\* 11 Mees. & W. 675.

\* *Hurrell v. Ellis*, 15 Law Jour. 18, C. P.

age of goods was entrusted wrongfully broke bulk.

*Tindal, C. J.*, thought, that if the defendant did the act complained of, as the jury had found, "wrongfully and unjustly" there could be no necessity for its being done maliciously. Suppose the defendant had blotted out the licence altogether, would it have been possible to contend that the plaintiff would have had no cause of action? Then as to the objection suggested as to the form of action, *Manle, J.*, observed, that at the time the act complained of was done, the defendant, and not the plaintiff was rightfully in possession of the document. The action, under these circumstances, was properly brought in case. All the judges were of opinion that the action was maintainable, and brought in a proper form. The rule to arrest the judgment was therefore refused.

#### RIGHT OF ASSIGNEES TO INTEREST ACCRUING AFTER BANKRUPTCY.

It was decided by the Court of Common Pleas, in a case reported in the number of Messrs. Manning and Grainger's Reports, which was last published,<sup>a</sup> that where a party is indebted to a bankrupt in a sum bearing interest, the assignees may recover the amount of interest which has accrued subsequently to the bankruptcy, although there has been no express reservation of interest.

The facts upon which this decision was founded were simply as follow :—

The bankrupts were bankers, and had advanced the defendant by his agent, 351*l.* The assignees sued for the recovery of this sum, and had a verdict for 392*l.* 18*s.* 6*d.*, which included 41*l.* 18*s.* 6*d.* allowed by the jury for interest since the stoppage of the bank. Upon a rule to reduce the amount of the verdict by striking out the sum awarded by the jury for interest, it was contended, that the defendant's liability to pay interest ceased as soon as the bankers became bankrupt.

The court, however, observed, that as an official assignee was appointed immediately, and the defendant might have paid the debt, notwithstanding the bankruptcy, there was no reason why he should retain

this creditors' money without paying interest. The 6 Geo. 4, c. 16, s. 63, vested in the assignees all the rights of the bankrupts in the most distinct and ample terms, and as the bankers would have been entitled to interest, if they had not become bankrupts, their assignees were now entitled. If the defendant desired to escape the payment of interest, it was his duty to have come forward and discharged the debt due by him to the bank. Upon these grounds the court refused to reduce the damages.

#### LAW OF ATTORNEYS.

##### ACTION ON A PROMISSORY NOTE GIVEN IN DISCHARGE OF AN ATTORNEY'S BILL.

THE statutory enactment<sup>a</sup> which obliges an attorney or solicitor to deliver a bill of his fees, charges or disbursements, one month before commencing any action for the recovery thereof, is one which, however desirable it may be for the protection of suitors, very frequently produces more inconvenience and injustice to the attorney or solicitor, than any person unacquainted with its practical working could readily conceive. We rejoice therefore to find the judges decidedly setting themselves against an attempt to strain the law, by extending the operation of this invidious and questionable provision to securities given to an attorney or solicitor, in respect of professional business.

The point was raised before the Court of Exchequer, on demurrer, in a case lately reported,<sup>b</sup> and may now be said to be definitively settled.

The state of the pleadings on which the question was determined was as follows :—The plaintiff brought an action, it as

<sup>a</sup> 6 & 7 Vict. c. 73. The 37th sect. enacts that, "from and after the passing of this act, no attorney or solicitor, nor any executor or administrator, or assignee of any attorney or solicitor, shall commence or maintain any action or suit for the recovery of any fees, charges or disbursements for any business done by such attorney or solicitor, until the expiration of one month after such attorney or solicitor, executor, administrator or assignee of such attorney or solicitor, shall have delivered to the party to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such fees, charges or disbursements," subscribed by the proper hand of such attorney or solicitor, &c.

<sup>b</sup> *Jeffreys v. Evans and others*, 14 Mees. & W. 210.

<sup>a</sup> *Pott and others*, assignees of Weatherley and others v. *Beavan*, 7 M. & Gr. 604.

<sup>c</sup> *Cameron v. Smith*, 2 Barn. & Ald. 305, where it was held that interest cannot be added to the principal sum so as to constitute a good petitioning creditor's debt, was the only case cited on behalf of the defendant.

sumpaid on a promissory note for 80*l.*, made by the defendants, payable to the plaintiff, or his order, three months after date. The defendants pleaded in substance, that the note was given for business done by the plaintiff as an attorney, and that the action was brought without the delivery of a signed bill one month before the commencement of the suit, contrary to the form of the statute 6 & 7 Vict. c. 73, s. 87. The plaintiff demurred, on this plea, on the ground, that it was not an answer to an action on a promissory note, that the note was given in respect of an attorney's bill not previously delivered, and the defendant joined in demurrer.

On the part of the defendant it was argued, that the delivery of the note did not amount to payment, and that as soon as the note was dishonoured, the attorney was compelled to refer to the original consideration for which it was given. Here the only consideration was business done as an attorney, and the plaintiff was prevented from recovering on that consideration by reason of the prohibition contained in the statute.

The court thought the case admitted of no doubt, and did not call upon the plaintiff's counsel. It was quite clear that if the defendants had paid the amount of the plaintiff's bill, they could not recover back the money upon the grounds stated in the plea, and therefore the plea afforded a defence to an action upon the note. The statute means to protect clients if they chose to be protected, but not if they chose to give a bond or bill for the debt. Instead of pleading to the action, the proper course for the defendant was, to have applied to tax the plaintiff's bill, and stay proceedings on payment of the sum found due on taxation. Upon these considerations, judgment was given for the plaintiff.

history has been excluded, and whatever has been abolished by statute, but remains in force in respect to past transactions, has been noticed with brevity, and whilst he has incorporated the effect of the real property statutes into his treatise, he has confined his views of the decisions of the courts to such points as may be deemed settled. Those which are still in doubt have been noticed, for the purpose of showing the state of the law, without entering into discussion on doubtful points that belong to other treatises.

Confining the work to the ordinary wants of the practitioner, the author has endeavoured to embrace the whole of the Law of Real Property, of which particular parts only are considered in other works.

Designing by this treatise to give a connected and complete view of the subject, the author has aimed at an arrangement suited to its comprehensive character. In the general outline he has partially followed the plan of Sir Matthew Hale, (afterwards adopted by Sir William Blackstone), and has arranged all the matter in such order as may serve to give a clear and distinct view of the several points, and their consequent hearings on the important branch of law to which the treatise is devoted.

The statute on the Transfer of Property, though passed late in the session, has been briefly noticed with the latest decisions in their appropriate places.

Mr. Crabb on the subject of the Conveyancing Statutes of the last session refers to his "Precedents in Conveyancing," and his "Digest and Index of all the Statutes." As this work is designed for a complete treatise on the Law of Real Property in all its branches, we should have preferred that the statutes of the last session, as well affecting the mode or practice of transferring real property, as the rules and principles of the law, should have been stated and commented upon; but the acts of the last session are likely to be so little operative, that probably Mr. Crabb deemed them unnecessary to notice.

The following analysis will show the scope and method of treating the subject.

The 1st Book states the Nature of Real Property in General; and is thus subdivided:—

1. Distinction between realty and personality;
2. Corporeal hereditaments; 3. Incorporeal hereditaments.

The 2nd Book relates to Tenures; and the topics are thus classified:—

## NOTICES OF NEW BOOKS.

*The Law of Real Property, in its present state: practically arranged and digested in all its branches, including the very latest Decisions of the Courts.* By GEORGE CRABB, Esq., Barrister-at-Law. In Two volumes. London: Maxwell & Son, 1846. Pp. 724, 1209.

This work is well designed for practical utility. Mr. Crabb has confined his labours to the law in its present state. Its



1. Of the nature of tenures in general; 2. Modern free tenures; 3. Copyhold and other base tenures.

The 3rd Book treats of Estates; and is thus arranged:—

1. Estates in general; 2. Estate in fee simple; 3. Estate in fee tail; 4. Estates for life; 5. Estate for years; 6. Estate at will from year to year, or at sufferance; 7. Equitable estates; 8. Estates on condition; 9. Estates in coparcenary; 10. Estate in joint tenancy; 11. Tenancy in common; 12. Estate in remainder; 13. Estate in reversion; 14. Customary estates.

The 4th Book concerns Titles to Things Real:—namely,

1. Title in general; 2. Title gained; 3. Title lost.

The 5th Book concisely treats of Injuries to Things Real, and their remedies:—viz.

1. Injuries to things real; 2. Remedies for the injuries to things real.

Such is the general scope of this elaborate work; and we shall take an early opportunity of noticing some of the views which it contains of the recent alterations of this branch of the law.

## NEW BILLS IN PARLIAMENT.

### METROPOLITAN BUILDINGS.

By the 7 & 8 Vict. c. 84, one of her Majesty's principal secretaries of state was empowered to appoint two persons, being of the profession of an architect or surveyor, to be official referees of metropolitan buildings for the purposes of the act, and from time to time, as he should think proper, to remove such official referees, and in their place to appoint other persons so qualified; and the Commissioners of her Majesty's Woods and Forests were authorized to appoint a registrar of metropolitan buildings, who should hold his office during the pleasure of the said commissioners; and it was enacted, that the determination of such two official referees, or of one of them with the assent of the said registrar, as to all or any matters referred to them, should be binding on all parties to such reference; and that any matter required or permitted to be done by the official referees might be done by either of them with the assent of the registrar, unless express provision to the contrary should be made, and if done by any one of them, with such assent, should be as valid and effectual as if done by both of

them; and by the act the official referees were prohibited from acting as surveyors, and every person being or becoming commissioner, receiver, steward or agent of any owner of houses within the limits of the act, was disqualified from holding the office either of official referee or of registrar under the said act.

The present bill recites, that the duties and qualifications for office of the registrar of metropolitan buildings are of a character wholly distinct from the duties and qualifications for office of the official referees, and it would conduce to the more satisfactory execution of the recited act if there were three official referees, (all of them being of the profession of a surveyor or architect,) and the acts and awards of such three official referees, or of any two of them, were made as valid and binding as if the same had been done or made under the authority of the recited act by the two official referees thereby authorized to be appointed, or by one of them with the assent of the said registrar; and for the purpose of obtaining persons duly qualified to discharge functions of official referees without increase of charge to the public or the localities comprised within the limits of the recited act, it is expedient to relax in manner hereinafter mentioned the prohibitions and disqualifications appertaining to the office of official referees under the said recited act.

It is therefore proposed to enact—

1. That it shall be lawful for one of her Majesty's principal secretaries of state to appoint a person, being of the profession of an architect or surveyor, to be an official referee of metropolitan buildings in addition to the official referees authorized to be appointed by the recited act, and from time to time, as he shall think proper, to remove such additional official referee, and to appoint any other person qualified as aforesaid in his place; and every official referee to be appointed under the authority of this act shall make the same declaration of official fidelity, and have the same duties, powers, authority and jurisdiction, and be subject to the same rules and regulations (save as hereinafter varied or relaxed) as if the said recited act had authorized the appointment of three official referees, and the official referee appointed under the authority of this act had been appointed official referee under the authority of the recited act.

2. *Two official referees may act.*—That all acts, matters and things by the recited act required, directed or permitted to be done by the official referees of metropolitan buildings, or by one of such official referees with the assent of the registrar, may be done by the official referees appointed and to be appointed under the authority of the recited act and of this act, or by any two of them; and that the acts, certificates, awards, orders and determinations of any two of the said official referees shall be as valid, binding and effectual as if the same had been done, signed, made or determined by all the said official referees; and the assent of the said registrar of metropolitan buildings shall not be

required to give effect to the same; and the assent of the said registrar shall not render valid any act, certificate, award, order or determination, done, signed or made by one only of the said official referees, which would not be valid without such assent.

3. That notwithstanding anything in the recited act to the contrary contained, it shall be lawful for one of her Majesty's principal secretaries of state, if and so long only as he shall think proper, by any writing under his hand, to permit and authorize any one or more of the persons who for the time being may hold the office of official referee to act as surveyor, either alone or with any partner, or by an agent; and no person shall be ineligible or disqualified from holding the office of official referee by reason of his continuing to act as a surveyor with such permission as aforesaid, or by reason of his being or becoming commissioner, receiver, steward or agent for or on behalf of any owner of houses or land within the limits of the recited act, provided the fact of such person being or becoming such commissioner, receiver, steward or agent be notified to one of her Majesty's principal secretaries of state, and licensed by him in writing, before such person be appointed or continue to act as official referee; but it shall not be lawful for any person holding the said office to act as official referee in the case of any building or matter in which he shall be employed as architect or surveyor, or where he shall be the commissioner, receiver, steward or agent of any person interested in such building or matter; and if it shall happen that more than one of the said official referees shall be employed as architect or surveyor as to the same building or matter, or shall be the commissioner, receiver, steward or agent of any person interested therein, or if any disagreement or difference of opinion shall arise between any two official referees who shall act as to such building or matter, not being employed as architect or surveyor, or as commissioner, receiver, steward or agent of any person interested therein, it shall be lawful for the Commissioners of her Majesty's woods, forests, land revenues, works and buildings, from time to time, upon the report of the official referees or any one of them, or upon the application of any person interested in the matter in dispute, to authorize one or more competent persons, being of the profession of an architect or surveyor, to be special referees in respect of such particular building or matter, either in conjunction with the acting official referee or referees, or alone, as the case may require; and every special referee authorized by the said commissioners shall, as to the particular building or matter for which he is authorized, have the same power, authority and duties as if he had been appointed an official referee under the authority and for the general purposes of the recited act; and it shall be lawful for the said commissioners to assign to every such special referee such part of the remuneration of the official referee or referees who shall be disqualified as aforesaid from acting as to such particular building or matter, or otherwise

to remunerate him as the said commissioners shall think fit.

4. *Offices vacant.*—That if any official referee shall act as surveyor, either alone or with any partner, or by an agent, or as commissioner, receiver, steward or agent for or on behalf of any owner of houses or land within the limits of the recited act, without the license and consent in writing of one of her Majesty's principal secretaries of state, or shall continue to act as surveyor, either alone or with any partner, or by an agent, or to act as such commissioner, receiver, steward or agent as aforesaid; after such license and consent shall have been withdrawn or shall have expired, then he shall cease to be qualified to hold the office of official referee, and thereupon such office shall be vacant, without prejudice nevertheless to any acts done by him in his capacity of official referee, so far as other persons are affected thereby.

5. Salaries of the three official referees not to exceed in the whole 3,000*l.* a year.

6. Contributions to be paid to the consolidated fund and salaries paid thereout.

## DRAINAGE OF SETTLED ESTATES.

### ORDERS OF THE COURT OF CHANCERY.

*March 4th, 1846.*

WHEREAS by an act of parliament made and passed in the session of parliament held in the 8 & 9 Vict., intituled "An Act to alter and amend an Act passed in the 3 & 4 Vict., intituled 'An Act to enable the owners of settled estates to defray the expenses of draining the same by way of mortgage,'" it was amongst other things enacted, That, for simplifying the proceedings under the said act, and rendering the same inexpensive, it should be lawful for the Lord High Chancellor, with the assistance of the Master of the Rolls, from time to time to make such orders and provisions as he might think proper for the facilitating the mode of application to the court, and of the proceedings before the Master or otherwise: And whereas the Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, has, with the assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, and for the purposes in the said act mentioned, thought proper to make the following orders and provisions. Now, therefore, it is ordered by his Lordship the Lord High Chancellor, with the assistance of his Lordship the Master of the Rolls, That all applications made to this court pursuant to the said act, and all proceedings to be had thereunder, shall be made and conducted in the manner directed

by the several orders and provisions herein-after set forth; viz.

I. Any person entitled to land within the meaning of the said act may present to the Lord Chancellor, or to the Master of the Rolls, a petition in the form herein-after set forth, with such variations as the nature and circumstances of the case may require.

(Form of Petition.)

In the matter  
and

In the matter of the act (8 & 9 Vict. c. 56), &c.  
To the Right Honourable the Lord Chancellor,  
or the Right Honourable the Master of the  
Rolls.

The humble petition of *A. B.*

Sheweth,

That the lands herein-after mentioned, viz. [*&c. &c. &c.*] are now vested in your petitioner as tenant for life [or otherwise in some other character described in the act], and that your petitioner claims to be entitled to make permanent improvements in the said lands, by such means as are in the said act mentioned, and to cause the expense of making the same to be made a charge on the inheritance of the said lands under the provisions of the said act.

That the said lands are in the actual occupation of *C. D.*, who hath consented in writing to this application.

Your petitioner therefore prays, That your petitioner may be at liberty to make permanent improvements in the said lands, by the means in the said act mentioned, or some of such means, and to cause the expense of making such improvements to be made a charge on the inheritance of the said lands under the provisions of the said act, or that your Lordship will make such other order in the premises as your Lordship shall seem meet.

And your petitioner, &c. (Signed) *A. B.*

I hereby consent to this petition.

(Signed) *C. D.*, occupying tenant of the  
lands sought to be improved.

II. The petitioner, in any such petition presented to the Lord Chancellor, is to mark the same at or near the top or upper part thereof with the name of one of the Vice-Chancellors.

III. The Master of the Rolls in the case of any such petition presented to him, and the Vice-Chancellor with whose name any such petition presented to the Lord Chancellor shall be marked, may, upon consideration of such petition, and without any attendance of counsel, solicitor, or petitioner thereon, if he shall so think fit, make an order on such petition to the effect following, or to such other like effect, with such variations as the nature and circumstances of the case may require.

(Form of Order.)

Date

In the matter of, &c.

and

In the matter of the act (8 & 9 Vict. c. 56), &c.

Upon consideration, &c. of the petition, &c., it is ordered, that it be referred to the Master in rotation to inquire and state to the court whether the petitioner is entitled in possession to the lands in the petition mentioned, or any and which of them, within the meaning of the said act of parliament, and whether the said lands are in the actual occupation of *C. D.* in the said petition named; and if so, under what title, and whether the said *C. D.* has consented in writing to the said petition, and to the improvements proposed to be made under the provisions of the said act? And if the Master shall find that the petitioner is so entitled, and that the said *C. D.* is in such occupation, and has so consented, let the Master further inquire and state to the court what, if any, other persons or person are or is entitled to, or interested in, the said lands, or any of them, in remainder or reversion, or by way of mortgage, charge, or otherwise; and the petitioner is to be at liberty to lay before the Master proposals for making permanent improvements in the said lands, by any such means as are in the said act mentioned, and to set forth in such proposals the nature and extent of such improvements, and the estimated expense thereof, and the estimated value of the permanent improvements proposed to be made: And the Master is to inquire and state whether such proposed improvements are permanent improvements within the meaning of the said act; and if so, what will be the expense of making the same, and what will be the value of such permanent improvements? and whether it will be beneficial to all persons interested in the said lands, that such permanent improvements should be made under the provisions of the said act? And the Master is to require such evidence to be produced before him, and, if he shall think proper, is to cause such surveys of the said lands to be made, as shall appear to him to be necessary to enable him to make a satisfactory report on the matters hereby referred to him.

IV. The Master to whom the said reference may be made is to require proof of the deed, will, or other instrument under which the petitioner claims to be entitled to the land, and of the manner in which the petitioner claims title under the same, but he is not otherwise to require proof of the title to the land.

V. The Master, if he shall think it necessary, for the due prosecution of the reference, may direct the petitioner to serve any other person interested in the land with notice of the proceedings; and such person, so served, may afterwards attend such proceedings as a party thereto; but if such person, being so served, shall de-

cline or neglect to attend pursuant to such notice, the Master may proceed in his absence, and he is to state the same in his report.

**VI.** The Master is, during the reference, to be authorised to apply, by note in writing, to the judge by whom the order was made, for any special directions, or for leave to state any special circumstances, touching the matters referred to him; and, if he shall receive any such special directions, or such leave, he is to state the same, and his proceeding thereon, in his report.

**VII.** The proceedings upon the reference are to be conducted according to the general rules and orders of the Court of Chancery, so far as they are consistent with these orders.

**VIII.** The Master's report is to be filed in the report office.

**IX.** Any person interested in the land is, within fourteen days after the filing of the report, to be at liberty to petition the Lord Chancellor in case the reference was made by him or any Vice-Chancellor, or the Master of the Rolls, in case the reference was made by him, that such report may be reviewed.

**X.** If such petition shall be presented, the judge, by whom the reference was made, is to take the same into his consideration; and, if he shall so think fit, he may dispose thereof, either by dismissing the same, or by referring the matter back to the Master with or without special directions.

**XI.** The judge considering such petition that the Master's report may not be confirmed, may direct any person interested to attend, and may, if he shall think it necessary, but not otherwise, direct the same to be argued by counsel in open court or otherwise.

**XII.** If a reference back to the Master is made, the proceedings are to be as on the original reference.

**XIII.** If no petition that the report may be reviewed is presented, the person who has obtained the report may, after the expiration of fourteen days from the filing of the report, present a petition for its confirmation and for leave to make the proposed improvements under the provisions of the act; and such petition may be in the form herein-after set forth, with such variations as the nature and circumstances of the case may require.

*(Form of Petition.)*  
In the matter of, &c.  
In the matter of the act (8 & 9 Vict. c. 55), &c.

To the Right Honourable the Lord Chancellor or the Right Honourable the Master of the Rolls,  
The humble petition of, &c.  
Sheweth,

That in pursuance of an order made in this matter, bearing date the      day of      Mr.      the Master to whom the said matter was referred, has made his report, bearing date the      day of      and for the reasons therein stated has found *[here state the Master's findings]*.

That the said report has been filed in the Report Office of this court, and that no special application has been made to review the same.

Your petitioner, therefore, humbly prays your Lordship, that the said report may be confirmed absolutely, and that your petitioner may be authorised to make such permanent improvements as are certified in the said report, under the provisions of the said act.

**XIV.** On the presentation of such last-mentioned petition, the judge by whom the reference was made is to consider the same, and is to dispose thereof by confirming the report and giving the permission asked, or by referring the matter back to the Master, or by dismissing the petition, or otherwise, as the justice of the case may require.

**XV.** On the consideration of such last-mentioned petition the judge may require the attendance of the persons interested; and, if he shall think it necessary, but not otherwise, may direct the matter to be argued by counsel in open court or otherwise.

**XVI.** The order confirming the report may be in the form following, with such, if any, variations, as the nature and circumstances of the case may require.

*(Form of Order.)*

Date  
In the matter of  
and  
In the matter of the act (8 & 9 Vict. c. 55), &c.

Whereas      did on the      day of      prefer his petition to the Right Honourable      thereby setting forth, and praying, that he might be at liberty to make permanent improvements in the lands therein mentioned, under the provisions of the said act; and thereupon his Lordship, on consideration of the matter of the said petition, did, by his order, dated the      day of      refer it to the Master to make the inquiries therein mentioned; and, in pursuance of the said order,

the said Master has made his report, dated the day of \_\_\_\_\_ and the said report was duly filed in the Report Office, on the day of \_\_\_\_\_ and no application has been made that the same may not be confirmed: And the said *A. B.* doth now, by his petition, pray that the same may be confirmed, and that he may be at liberty to make such permanent improvements as are specified in the said report, under the provisions of the said act; his Lordship, on consideration of the matter of the said petition and of the said Master's report, doth hereby order that the said report be confirmed, and that the said petitioner be at liberty to make such permanent improvements in the said lands as are in the said report mentioned, under the provisions of the said act.

XVII. The Master by whom the report was made may, upon production to him of the order confirming the same and giving leave to make the improvements, deliver to the party who has obtained such order a certificate to the effect and in the form herein-after stated, with such variations as the nature and circumstances of each case may require.

*(Form of Certificate.)*

Date \_\_\_\_\_

In the matter of \_\_\_\_\_  
and \_\_\_\_\_

In the matter of the act (8 & 9 Vict. c. 56), &c.

Whereas [*Recite 1st, the Order of Reference ;  
2d, the Report ;  
3d, the Order confirming the  
Report, and authorizing the  
improvements to be made.*]

Now, therefore, I the said Master, in pursuance of the said act, do hereby certify, that any person advancing money for making the said permanent improvements specified in my said report will, upon its being made to appear to me that such money, to the amount specified in my said report, has been fully expended in making the said improvements, or in paying the expense of obtaining the authority of this court, become and be entitled to a charge on the inheritance of the land for the repayment of the money advanced, with interest; but such charge is to be subject to the terms and conditions provided by the said act, and before the same can become effective the amount of money expended as aforesaid is to be stated by me by way of endorsement on this certificate.

XVIII. Such certificate is to be made in duplicate, and one copy thereof is to be filed in the report office, and the other copy thereof is to be delivered to the party.

XIX. Upon the application of any party to whom such certificate may have been granted, the Master may inquire what sums of money have been *bond fide* and truly expended in making such permanent

improvements in the said land as are mentioned and certified to be proper in his said report, and in defraying such expenses as are in the said act mentioned, and upon what terms as to interest and repayment by instalments the money was advanced; and the Master having duly inquired into the matter, and being satisfied by proper evidence, may make an endorsement on the said certificate to the effect and in the form herein-after set forth, with such variations as the nature and circumstances of each case may require.

*(Form of Endorsement.)*

Whereas it has been alleged before me that the sum of £ \_\_\_\_\_ being the whole [or part] of the sum of £ \_\_\_\_\_ mentioned in my report recited in the within certificate, has been expended in making such improvements and paying such expenses as are therein mentioned, I have, pursuant to the liberty given to me by the said act, inquired what expenses have been incurred in and about the application to the court, and making the necessary surveys, valuations and estimates, and also what sums of money have been actually expended in such improvements; and evidence as to such expenses hath been laid before me, and I have duly considered the same; and I do hereby state and certify that it hath been made to appear to me that the sum of £ \_\_\_\_\_ hath been fully expended in manner aforesaid in such expenses as aforesaid, and the sum of £ \_\_\_\_\_ for improvements by drainage, warping, irrigation, or embankment, and the sum of £ \_\_\_\_\_ for improvements by the erection of buildings: And I do hereby further certify that the said several sums amount in the whole to the sum of £ \_\_\_\_\_ and that the same was [or were] advanced on, &c. [or at such several times and in the several sums herein-after set forth; viz. &c.;] and that such several sums are to be repaid, with interest after the rate of \_\_\_\_\_ per centum per annum, by such equal annual instalments as are herein-after mentioned, viz. &c. &c.

XX. The endorsement is to be made in duplicate, and one copy thereof is to be written on the party's certificate, and delivered to him; the other is to be filed and annexed to the copy of the certificate filed in the report office.

XXI. All orders made by the Master of the Rolls or any Vice-Chancellor are subject to be discharged or varied by the Lord Chancellor on petition to him for that purpose.

(Signed) **LYNDHURST, C.**  
**LANGDALE, M. R.**

# SCOTTISH MERCANTILE LAW AND PRACTICE.

## BILLS OF EXCHANGE.

IN this and a few following papers, some illustrations will be offered upon points of Scotch mercantile law and practice, with which it is important that English solicitors who have clients connected with Scotland, should be familiar.

In the present paper it is desired to direct attention to a few remarks upon Scotch *Bills of Exchange*.

An English bill of exchange and a Scottish bill of exchange are, in their value to the holders, two very different things. They are the same, indeed, up to the moment when the protest is taken and completed, but at that point the difference begins. The creditor in the English bill cannot enforce his claim but by an action at law; the creditor in the Scotch bill requires no such tedious machinery. The Scotch bill becomes by a simple and cheap process, a warrant for execution, both against the debtor's person and against his chattels.

The process by which this end is effected in Scotland is that of registration. A general record of protests is kept at Edinburgh, for Scotland; and besides this general record, a register of protests is kept for every one of the thirty-three counties of Scotland. The creditor in a dishonoured bill, if he desires to have execution upon it, causes the protest to be recorded in one of those registers, and upon this he receives an attested copy of the protest, to which is annexed a warrant of court authorising execution.

The value to the creditor in a Scotch bill of exchange may be illustrated by a short contrast between two debts; the one a debt constituted by a Scottish bill of exchange, and the other a Scotch debt which is due on an open account, or arises from a course of dealing, without being constituted by a bill.

### Mode of enforcing payment.

1. The creditor in a Scottish bill, as above explained, has only to protest his bill, and to record the instrument of protest, and a copy of the instrument of protest given out by the registrar, contains a writ of execution against the debtor's goods and chattels, as well as against his person.

On the other hand, the creditor in an open account due in Scotland, cannot enforce his debt unless by instituting an action at law.

### Surety in the action at law.

2. The debtor in a Scotch bill, may attempt to stay execution on it by bringing the action at law called a *suspension*, but the courts will not allow him an opportunity of proving his case, until he has presented satisfactory sureties, who become bound along with him for the amount of the bill and interest, and the costs of suit. The debtor in an open account due in Scotland, is entitled, when his creditor raises an action

against him for the debt, to defend it without presenting any surety.

### Defence to the action at law.

3. In all such lawsuits, the creditor in the Scottish bill enjoys other very important advantages over the creditor in the open account. The creditor in the bill becomes the defendant in the action of suspension, and is entitled to stand on the merits of the bill, leaving to the debtor, who is the plaintiff, the burden of making good his case as he best may. The creditor in the account must himself become the plaintiff, and on him rests the burden of proving his case, while the debtor stands merely on the defensive. In the action for staying execution on the bill, frivolous pleas are barred, not only by the necessity for presenting sureties, but likewise by the relative position of the parties; the bill itself, for example, being sufficient *prima facie* proof of the exact sum due, and of the exact time at which it is payable. In the action for enforcing payment of the account, the debtor has full facilities for urging frivolous and groundless defences, such as those which arise from disputing the sum due, or the term of payment.

### Limitation of actions on Scotch bills and accounts.

4. The Scottish bill does not suffer limitation (or, as the Scotch law calls it, prescription) in so short a time as the Scottish open account. The term of limitation (or prescription) for the Scottish bill, is six years from the time when payment is demandable: for a debt due on open account, or arising out of a course of dealing, the Scottish limitation (or prescription) is only three years from the close of the account. The Scottish prescription, however, differs materially from the limitation introduced by the English statutes. In Scotland, the prescription does not bar the creditor from bringing his action, or enforcing execution; it only confines him within certain narrow limits in proving his case; it just prevents him from succeeding in his action unless he shall prove both the constitution and the subsistence of the debt by either of these two modes:—*First*, by the acknowledgment in writing of the debtor or his representatives, after the period of prescription has elapsed; or, *Secondly*, by the oath of the debtor or his representatives.

## EXAMINATION PRIZES.

### To the Editor of the Legal Observer.

SIR,—Having noticed a paragraph in one of the newspapers to the effect, that the subject of granting certificates of proficiency to those deserving of them at the legal examinations had been again mooted amongst those in authority, I am induced to address you in favour of the plan, being myself a sincere believer that it would have a beneficial effect, and tend greatly to raise the standard of the profession.

The reasons on which I found my belief are

chiefly these :—That candidates (at least if they wished to distinguish themselves) would have to use far greater diligence than at present is considered necessary in preparing for their examination, and therefore would acquire greater proficiency. And I, moreover, think it exceedingly unfair, that a candidate who has passed his examination with credit, should be rated equally with him who has just scraped through. And again, not only the candidates but attorneys in practice would feel the benefit of the plan, for they would be enabled to choose with far more certainty than they can under the present system, young men of sufficient proficiency for clerks or junior partners.

The custom of granting rewards to merit is very old, therefore I am not asking for the introduction of a new and untried theory—but am seeking that a system which has stood the test of ages, and ever been found beneficial where properly applied, should be extended to our profession. I need only mention the universities as an instance, (for it would be superfluous to name further authorities,) where it has met with complete success, and I contend, that there is nothing so essentially different in the effect of our examinations that would prevent its equally succeeding with us.

A. C.

[We noticed this subject in our number of the 28th February, p. 379. We cannot learn that there is any probability, at present, of instituting any examination prizes; no doubt due notice will be given of any change in the course of proceeding.—Ed.]

## CIRCUITS OF THE COMMISSIONERS

### FOR THE RELIEF OF INSOLVENT DEBTORS.

#### Summer Circuits, 1846.

##### HOMER CIRCUIT.

Henry Revell Reynolds, Esq., Chief Commissioner.

Kent, at Dover, Friday, July 3.

At the City and County of the City of Canterbury, Monday, July 6.

Kent, at Maidstone, Tuesday, July 7.

Sussex, at Lewes, July, 24.

Hertfordshire, at Hertford, Friday, July 31.

##### MIDLAND CIRCUIT.

John Greathhead Harris, Esq. Commissioner.

Essex, at Chelmsford, Tuesday, June 23.

Essex, at Colchester, Wednesday, June 24.

Suffolk, at Ipswich, Thursday, June 25.

Norfolk, at Yarmouth, Saturday, June 27.

Norfolk, at the Castle of Norwich, Monday, June 29.

At the City and County of Norwich, the same day.

Norfolk, at Lynn, Wednesday, July 1.

Suffolk, at Bury St. Edmunds, Thursday, July 2.

Cambridgeshire, at Cambridge, Friday, July 3.

Huntingdonshire, at Huntingdon, Saturday, July 4.

Bedfordshire, at Bedford, Monday, July 6.

Buckinghamshire, at Aylesbury, Tuesday, July 7.

Northamptonshire, at Northampton, Thursday, July 9.

Northamptonshire, at Peterborough, Saturday, July 11.

Rutlandshire, at Oakham, Monday, July 13.

Lincolnshire, at Lincoln, Wednesday, July 15.

Nottinghamshire, at Nottingham, Friday, July 17.

At the Town and County of the Town of Nottingham, the same day.

Derbyshire, at Derby, Monday, July 20.

Leicestershire, at Leicester, Wednesday, July 22.

Warwickshire, at Coventry, Thursday, July 23.

Warwickshire, at Warwick, Friday, July 24.

Shropshire, at Oldbury, Saturday, July 25.

Warwickshire, at Birmingham, Monday, July 27.

At the City and County of the City of Lichfield, Tuesday, July 28.

Staffordshire, at Stafford, Wednesday, July 29.

Shropshire, at Shrewsbury, Friday, July 31.

##### NORTHERN CIRCUIT.

William John Law, Esq., Commissioner.

Yorkshire, at Sheffield, Tuesday, June 9.

Yorkshire, at Wakefield, Thursday, June 11.

At the Town and County of the Town of Kingston upon-Hull, Tuesday, June 16.

At the City and County of the City of York, Wednesday, June 17.

Yorkshire, at the Castle of York, the same day.

Yorkshire, at Richmond, Saturday, June 20.

Durham, at Durham, Monday, June 22.

At the Town and County of the Town of Newcastle-upon-Tyne, Wednesday, June 24.

Northumberland, at Newcastle-upon-Tyne, the same day.

Cumberland, at Carlisle, Friday, June 26.

Westmoreland, at Appleby, Monday, June 29.

Westmoreland, at Kendal, Tuesday, June 30.

Lancashire, at Lancaster, Wednesday, July 1.

Lancashire, at Liverpool, Wednesday, July 8.

Cheshire, at the Castle of Cheshire, Saturday, July 11.

At the City and County of the City of Chester, the same day.

Flintshire, at Mold, Monday, July 13.

Denbighshire, at Ruthin, Tuesday, July 14.

Merionethshire, at Dolgelly, Thursday, July 16.

Anglesey, at Beaumaris, Tuesday, July 21.

Carmarthenshire, at Carmarvon, Wednesday, July 22.

Montgomeryshire, at Welsh Pool, Saturday, July 25.

##### SOUTHERN CIRCUIT.

David Pollock, Esq., Commissioner.

Berkshire, at Reading, Saturday, June 13.

Oxfordshire, at Oxford, Monday, June 15.

Worcestershire, at Worcester, Wednesday, June 17.

Herefordshire, at Hereford, Thursday, June 18.

Rutlandshire, at Presteigne, Saturday, June 20.

Brecknockshire, at Brecon, Monday, June 22.

Cardiganshire, at Cardigan, Wednesday, June 24.

Cardiganshire, at Cardigan, Thursday, June 25.

Pembrokeshire, at Haverfordwest, Saturday, June 27.

Glamorganshire, at Swansea, Tuesday, June 30.

Glamorganshire, at Cardiff, Thursday, July 2.

Monmouthshire, at Monmouth, Saturday, July 4.

Gloucestershire, at Gloucester, Friday, July 10.

At the City and County of the City of Bristol, Monday, July 13.

Somersetshire, at Bath, Tuesday, July 14.

Somersetshire, at Taunton, Thursday, July 16.

Cornwall, at Bodmin, Tuesday, July 21.

Devonshire, at Plymouth, Wednesday, July 22.

Devonshire, at the Castle of Exeter, Friday, July 24.

At the City and County of the City of Exeter, the same day.

Dorsetshire, at Dorchester, Monday, July 27.

Wiltshire, at Salisbury, Monday, July 29.

At the Town and County of the Town of Southampton, Friday, July 31.

Southampton, at Winchester, Monday, August 3.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st November, 1845.

### Common Law Courts.

[See 1st, Construction of Statutes, p. 333; 2nd, Grounds of Action and Principles of the Common Law, p. 358; 3rd, Pleadings, 382; 4th, Evidence, 403; 5th, Practice, 411.]

### VI. BANKRUPTCY.

#### ACT OF BANKRUPTCY.

A trader having overdrawn his banker's account to the extent of 864*l.*, promises a guarantee for 550*l.*, and assigns all his property to the bankers by a deed, in which 1000*l.* is stated to be due, and which contains a power of sale upon non-payment of that sum on demand, but no stipulation for further advances, though further advances are in fact made: *Held*, an act of bankruptcy. *Linden v. Sharp*, 6 M. & G. 895.

Cases cited: *Baxter v. Pritchard*, 1 Ad. & E. 456; 3 N. & M. 638; *Rose v. Haycock*, 1 Ad. & E. 460, n.; 3 N. & M. 645; *Twyne's case*, 3 Co. Rep. 806; *Edwards v. Harben*, 2 T. R. 587; *Martindale v. Booth*, 3 r. & Ad. 498; *Manton v. Moore*, 7 T. R. 67; *Reed v. Blades*, 5 Taunt. 212; *Wordall v. Smith*, 1 Campb. 332; *Jarman v. Woollaton*, 3 T. R. 618; *Harrelinton v. Gill*, 3 T. R. 620, n.; *Kidd v. Rawlinson*, 2 B. & P. 59; *Latimer v. Batson*, 4 B. & C. 652; 7 Dowl. & R. 106; *Manton v. Moore*, 7 T. R. 72; *Steel v. Brown*, 1 Taunt. 381; *Reed v. Wilmot*, 7 Bing. 577; 5 M. & P. 553; *Benton v. Thornhill*, 7 Taunt. 149; 2 Marsh. 427; *Steward v. Lombe*, 1 Brod. & B. 506; 4 J. B. Moore, 281; *Thornton v. Hargreave*, 7 East, 544; *Worseley v. De Mattos*, 1 Burr. 467; *Wilson v. Day*, 2 Burr. 827; *Compton v. Bedford*, 1 W. Bl. 362; *Law v. Skinner*, 2 W. Bl. 996; *Hassell v. Simpson*, 1 Dougl. 89, n.; *Butcher v. Easto*, 1 Dougl. 294; *Eckhardt v. Wilson* 8 T. R. 140; *Tapscott v. Burgess*, 4 East, 250; *Newton v. Chandler*, 7 East, 138; *Doe d. Lloyd v. Powell*,

5 B. & C. 308; 8 D. & R. 35; *Botcherley v. Lancaster*, 1 A. & E. 77; 3 N. & M. 383; *Siebert v. Spooner*, 1 M. & W. 714; *Tyrwh. & Gr.* 1075; 2 Gale, Exch. 135; *Porter v. Walker*, 1 M. & G. 686; 1 Scott, N. B. 568; *Whitwell v. Thompson*, 1 Esp. N. P. C. 68; *Baxter v. Pritchard*, 1 A. & E. 456; 3 N. & M. 638; *Rose v. Haycock*, 1 A. & E. 460, n.; 3 N. & M. 644; *Harwood v. Bartlett*, 6 N. C. 61; 8 Sc. 17; *Twyne's case*, 3 Co. Rep. 80, b.; *Whitwell v. Thompson*, 1 Esp. N. P. C. 68; *Rose v. Haycock*, 1 A. & E. 460, n.; 3 N. & M. 644; *Baxter v. Pritchard*, 1 A. & E. 456; 3 N. & M. 638; *Harwood v. Bartlett*, 6 N. C. 61; 8 Sc. 171; *Oom v. Bruce*, 12 East, 225; *Henig v. Stanforth*, 5 M. & S. 122; *Birdwood v. Raphael*, 5 Price, 593; *Brewer v. Sparrow*, 7 B. & C. 310; 1 Mann. & Ryl. 2; *Dutton v. Morrison*, 17 Ves. 195.

#### BANKRUPTCY.

*Bail bond*.—A bail bond given upon an arrest on a writ of *copias*, issued under 1 & 2 Vict. c. 110, s. 3, was set aside for a variance between such writ and the paper served on the defendant as a copy of the writ. *Copley v. Medeiros*, 7 M. & G. 426.

Cases cited: *Smith v. Pennell*, 2 Dowl. P. C. 654; *Richards v. Disprail*, 9 M. & W. 459; 1 Dowl. N. S. 384; *Plock v. Pachew*, 9 M. & W. 342; 1 Dowl. N. S. 381; *Dilton v. Claperton*, 9 M. & W. 473; 1 Dowl. N. S. 386; and see *Yeates v. Chapman*, 3 N. C. 262; 3 Scott, 648.

#### ESTOPPEL.

Certain timber which was deposited in the name of *A.*, the importer, in the West India Docks, was sold by him to *B.* *B.* afterwards contracted to sell the timber to *C.*, who accepted a bill for the amount, *B.* giving him an invoice of the timber and a delivery order. The dock company refused to deliver the timber, except upon an order from *A.* *C.* became bankrupt without having obtained such an order; and the bill was dishonoured.

*Held*, that there had been no constructive delivery to *C.*, so as to put an end to *B.*'s lien on the timber for the price.

*Held*, also, that *B.* was not estopped by having given a delivery order, from disputing the operation of such order as a constructive delivery of the timber. *Lackington v. Atherton*, 7 M. & G. 360.

Cases cited: *Dixon v. Yeates*, 5 B. & Ad. 313; 2 Nev. & Mann. 177; 2 M. & G. 805; 4 M. & G. 1082; *Townley v. Crump*, 4 A. & E. 58; 5 Nev. & M. 606; *Harman v. Anderson*, 2 Campb. 243; *Withers v. Lyss*, 4 Campb. 237; *Holt*, 18; *Lucas v. Dorrien*, 7 Taunt. 278; 1 J. B. Moore, 29.

#### EXECUTION.

See *Partner*.

#### MESSENGER.

The messenger to a fiat in bankruptcy appointed by the commissioners under the 6 G. 4, c. 16, s. 27, may be removed by the assignee. *Robson v. Jonassohn*, 7 M. & G. 351.

Cases cited: *Hamber v. Purser*, 2 C. & M. 209;

\* No report has been published since November, of Decisions in the Court of Review. The cases here noticed are from the Common Law Courts.



4 Tyrwh. 41; Page, ex parte, 1 Rose, 2; 17 Ves. 69; 1 Christ. B. L. 193; Sly v. Stevenson, 2 C. & P. 464.

#### JURISDICTION.

**Costs.**—The plaintiff, being a debtor to a bankrupt's estate, was summoned to appear and be examined before the district court of bankruptcy in which the fiat was prosecuted; but, refusing to come, was arrested by the defendant, the messenger of the court, under a warrant of the commissioner, and brought up in custody to be examined. He thereupon submitted to be examined, and at the conclusion of his examination, the commissioner said, that he was "discharged on payment of the costs incurred in bringing him up," and a memorandum to that effect was indorsed on the warrant. The defendant, in consequence, detained the plaintiff until the costs incurred in bringing him up were taxed, and paid by him, under protest. **Held**, first, that the above memorandum amounted to an order to detain the plaintiff until the costs were paid.

Secondly, that the commissioner had no jurisdiction under the Bankrupt Acts to make such an order, and would have been liable to the plaintiff in an action of trespass for the imprisonment under it, and therefore that defendant, who must be assumed to have known of such want of jurisdiction, was also liable. **Semble**, that, if the commissioner had had jurisdiction to commit the plaintiff, the defendant would have been protected, though he had no warrant under the hand and seal of the commissioner. *Watson v. Bodell*, 14 M. & W. 57.

Cases cited: *Moravia v. Sloper*, Willes, 30; 1 Stra. 509; *Smith v. Egginton*, 7 A. & E. 167; 2 N. & P. 143; *Bleasley v. Sloman*, 3 M. & W. 40; *Acherley v. Parkinson*, 3 M. & Selw. 411; *The Marshalsea case*, 10 Rep. 76; *Morse v. James*, Willes, 122; *Weller v. Toke*, 9 East, 364; *Salmon v. Percivall*, Cro. Car. 196; *Carratt v. Morley*, 1 Q. B. 27; 1 G. & D. 273; *Painter v. Liverpool Gas Company*, 3 A. & E. 433; 6 N. & M. 736; *Webb v. Bachelour*, 1 Vent. 273; *Morrell v. Martin*, 3 M. & G. 581; *Hamond v. Howell*, 1 Mod. 184; *Taaffe, Downes*, 3 Moore, 36; *Clarke*, in re, 2 Q. B. 619.

See Notes on this case, p. 236, *ante*.

#### ORDER AND DISPOSITION.

A. employed B. to build him a green-house for 50*l*. When it was completed, B. gave A. notice, and requested him to remit the price. A. remitted the amount and desired B. to keep the green-house till sent for. Afterwards B. (unknown to A.) deposited the green-house with C., telling him it was the property of A., and requesting him to keep it for A., which he agreed to do. B. having become bankrupt, his assignees took possession of the green-house.

**Held**, first, that the property in the green-house passed to A., there having been an appropriation of it to him by B., and an assent on his part to such appropriation; secondly, that the green-house was not in the possession, order, and disposition of B. as reputed owner. *Wilkins v. Bromhead*, 6 M. & G. 968.

Cases cited: *Atkinson v. Bell*, 8 B. & C. 277; 2 M. & R. 292; *Shackilwaite v. Cook*, 8 Taunt. 487; *White v. Wilks*, 5 Taunt. 176; *Knowles v. Horsfall*, 5 B. & Ald. 134; *Atkinson v. Bell*, 8 B. & C. 277; 2 Mann. & Ryl. 292; *Mucklow v. Mangles*, 1 Taunt. 318; *Goodall v. Skelton*, 2 W. Blac. 316; *Tartling v. Baxter*, 6 B. & C. 360; 9 Dowl. & Ryl. 272; *Bartram v. Payne*, 3 C. & P. 175; *Carruthers v. Payne*, 5 Bing. 270; 2 M. & P. 429; *Greening v. Clark*, 4 B. & Cr. 316; *Lyon v. Weldon*, 9 J. B. Moore, 629; *Muclov v. Mangles*, 1 Taunt. 318; *Woods v. Russell*, 5 B. & Ald. 942; *Elmore v. Stone*, 1 Taunt. 458; *Ragg v. Minett*, 11 East, 210; *Howe v. Palmer*, 3 B. & Ald. 321; *Alexander v. Gardner*, 1 New Ca. 671; 1 Scott, 630; *Carter v. Toussaint*, 5 B. & Ald. 855; 1 D. & R. 515; *Knowles v. Horsfall*, 5 B. & Ald. 134; *Vacher v. Cocks*, 1 B. & Ad. 145; *Atkinson v. Bell*, 8 B. & C. 277; 2 Mann. & Ryl. 292; *Robde v. Thwaites* 6 B. & C. 388; 9 Dowl. & Ryl. 293; *Mucklow v. Mangles*, 1 Taunt. 318; *Goss v. Quinton*, 3 M. & G. 825.

See Notes on this case, p. 188, *ante*.

#### PARTNER.

Upon a *f. fa.* on a judgment against A., who is partner with B., the sheriff is bound to seize the whole of the partnership effects, but he can only sell the moiety belonging to A., the property and possession of the other moiety continuing in B.

On the 22nd of November, 1842, a *f. fa.* issued upon a judgment against A. the partner of B., and on the same day was lodged with the sheriff. On the following day the officer entered under a warrant granted thereon, and seized the whole of the partnership effects. On the 2nd of December, another writ of *f. fa.* issued upon a joint judgment against A. & B., directed to the same sheriff, who thereupon granted a warrant to different officers. No actual seizure was made under this second writ. On the 7th of Dec. each of the partners committed an act of bankruptcy, and on the 9th a fiat was issued against them, under which they were duly declared bankrupts. The sheriff afterwards sold the whole of the partnership effects in satisfaction of the two writs: **Held**, that the sheriff was not justified in selling any part of the goods to satisfy the second writ, such writ not having been served or levied by seizure upon the property of the bankrupts, before the issuing of the fiat, within the meaning of the 6 G. 4, c. 16, s. 103. *Johnson v. Evans*, 7 M. & G. 240.

Cases cited: *Clerk v. Withers*, 1 Salk. 322; *Heydon v. Heydon*, ib. 392; *Hutchinson v. Johnson*, 1 T. R. 729; *Jones v. Atherton*, 7 Taunt. 56; *Sawle v. Paynter*, 1 D. & R. 307; *Wintle v. Freeman*, 11 Ad. & E. 539; 1 Gale & D. 93; *Godson v. Sanctuary*, 4 B. & Ad. 255; 1 N. & M. 52; *Whitmore v. Robertson*, 8 M. & W. 463; *Bachurst v. Glinkard*, 1 Show. 173; *Jackey v. Butler*, 2 Ld. Raym. 871; *Chapman v. Koops*, 3 B. & P. 289; *Holmes v. Mentse*, 4 Ad. & E. 127; 5 N. & N. 563; *Pope v. Haman*, Comberb. 217; *Eddie v. Davidson*, 3 Dougl. 660; *Morley v. Strombon*, 3 B. & P. 254; *Parker v. Piater*, ib. 288; *Bar-*

ton v. Green, 3 C. & P. 306; Frost's case, 5 Co. Rep. 89 a.; Jackson v. Humphreys, 1 Salk. 273; Rose v. Tomblinson, 3 Dowl. P. C. 55; Drewe v. Lainson, 11 Ad. & E. 529; 3 P. & D. 245; Skipp v. Harwood, 2 Swanst. 586.

#### PETITIONING CREDITOR'S DEBT.

A debt of 150*l.*, or upwards, of which a part is due to several persons as partners, is sufficient, under 6 Geo. 4, c. 16, s. 15, to support a fiat in bankruptcy. *Doe d. Lloyd v. Ingleby*, 14 M. & W. 91.

### VII. ARBITRATION.

#### AUTHORITY.

1. *Extent of*.—A cause after issue joined, having been referred to arbitration, but no power given to award a verdict; the arbitrator awarded a verdict to be entered for the defendants, and directed the plaintiffs and defendants respectively to execute mutual releases of all manner of actions, &c. *Held*, that the award was bad for excess of authority; and that that portion of it ordering a verdict to be entered could not be rejected as redundant, since, if struck out, the meaning of the award would be altered.

An affidavit verifying a copy of the award to be a true copy, need not state that the copy has been compared with the original award.

Parties are not bound to take office copies of exhibits attached to affidavits. *Hawkyard v. Stocks*, 2 D. & L. 936. See *Sherry v. Oke*, 3 Dowl. 349; *Birks v. Trippet*, 1 Wms. Saund. 32; *Wharton v. King*, 2 B. & Ad. 528; *Wynne v. Edwards*, 12 M. & W. 708; S. C. 1 D. & L. 976.

2. By a deed of submission dated the 25th of August, 1840, between G. M., J. M. and W. W., as trustees and executors of G. M. deceased, &c., and also as trustees, &c., and R. M.: after reciting that disputes had arisen between the parties touching the estate and effects of G. M. deceased, and touching several other matters and things, the parties referred the same to the award of T. S. and J. J., and such third person as umpire as they should appoint, and agreed to abide by their award touching the premises, or "anything in any wise relating thereto." The arbitrators made an award directing that R. M. should pay a certain sum to G. M., J. M. and W. W., but not stating whether it was payable to them in their character of trustees and executors, &c., or of trustees, &c. They also directed that it should be payable with interest up to a day subsequent to the date of the award, and if not paid by that day, G. M., J. M. and W. W. were authorised to withhold the payment of a certain annuity, by the same award directed to be paid by them to R. M., until out of the arrears of such annuity, the said sum should be liquidated. *Held*, that the arbitrators had exceeded their authority, and that the award was bad.

On the same day that the deed was executed, the arbitrators indorsed the following memorandum at the foot of it, in the presence of the

parties:—"Memorandum, that before proceeding with the within-mentioned arbitration, we appoint W. L. to be umpire in case we cannot agree about making our award; and that the said award is to be delivered on or before the 3rd day of November next." *Held*, that they had no authority to limit the time, as the deed did not do so, so as to vitiate an award made subsequently to the time limited.

*Notice*.—One of the parties to the deed had no notice of a meeting of the arbitrators, at which, however, no business was transacted beyond adjourning the meeting. Hereafterwards attended at a subsequent meeting, and delivered in a protest against the proceedings, but on another and distinct ground, than that of want of notice to attend the former meeting. *Held*, that the want of notice was, under the circumstances, no ground for setting aside the award. *In re Morphet, &c.*, 2 D. & L. 967. See *In re Smith v. Blake*, 8 Dowl. 130; *Curtis v. Potts*, 3 M. & S. 145; *In re Hick*, 8 Taunt. 694.

#### EVIDENCE.

See *Misconduct of Arbitrator*.

#### MISCONDUCT OF ARBITRATOR.

On a reference of a cause and all matters in difference to arbitration, the plaintiff tendered in evidence his books containing entries made by himself and others on his dictation, which being objected to as inadmissible, the arbitrator stated that the same strictness was not required as on a trial at *nisi prius*, and that, although the books were not strictly admissible, he had authority to receive them, and he accordingly did so; but it did not appear that he had acted upon them. *Held*, that this did not amount to misconduct in the arbitrator, so as to authorize the court to set aside the award. *Hegger v. Baker*, 14 M. & W. 9. See *In re Hall & Hinds*, 2 M. & G. 847; 3 Scott, N. R. 250; *Phillips v. Evans*, 12 M. & W. 309.

And see *Setting aside*.

#### SETTING ASIDE.

*Time for moving*.—It is no excuse for not applying within the proper time to set aside an award, that the party had been prevented from obtaining a knowledge of its contents by the arbitrator's improperly demanding an extortionable sum for his fees. *Moore v. Darley*. 1 C. B. 445.

Cases cited: *Reynolds v. Askew*, 5 Dowl. P. C. 682; *Potter v. Newman*, 2 C. M. & R. 742; *Tyrwh. & Gr. 39*; 4 Dowl. P. C. 504; *McArthur v. Campbell*, 2 Nev. & M. 444; 5 B. & Ad. 518; *Muskelbrook v. Dunkin*, 9 Bing. 603; 2 M. & Scott, 740; 1 Dowl. P. C. 722; *Dossett v. Gingell*, 2 M. & Gr. 870; 3 Scott, N. R. 179.

#### SEVERAL COUNTS.

Where a declaration contained several counts, and the cause was referred by order of a judge before plea pleaded: *Held*, that the arbitrator was not bound to find specifically upon each count in the declaration, but might find generally that the plaintiff had good cause of action

indge directing a revial of the taxation.

**INTERPLEADER.**

101 161; S. C. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849,

A rule nisi was obtained for entering up judgment *non obstante veredicto*, on one of several pleas, which was made absolute on argument by the Court of Queen's Bench. A court of error afterwards reversed the judgment *non obstante veredicto*. Held, that the defendant was entitled to the costs of opposing the rule. *Evans v. Collins*, 2 D & L. 939; S. C. 4 Q. B. 804, 820; 1 D. & M. 72.

21. *Witnesses not paid.* — Where it appeared that the costs of certain witnesses, sworn to have been paid in all affidavits of interest, and allowed in the Master's allocatur, had not in point of fact been paid till after the allocatur was granted, the Court of Queen's Bench ordered the plaintiff to refund such sums to the defendant, although no intention of fraud was imputed to the plaintiff. *Trent v. Harrison*, 2 D. & L. 241. See *Joppa v. De Tastet*, 2 B. & B. 892; *S. C.* 7 Moore, 120.

1. Where on the trial of an action of ejectment, a verdict was taken, subject to a special case, and before the terms of it were settled, the lessor of the plaintiff died. *Held*, that this afforded no ground for an application for setting aside the verdict, or staying proceedings in the action; but that the court would compel the plaintiff to find security for costs. *Doe d. Earle of Egremont v. Stephens*, 2 D. & L. 993.

Cases cited : Thurstont d. Turner v. Grey, 2  
Stra. 1036; Doe d. Cozens v. Cozens, 1 Q. B.  
426; S. C. 9 Dowl. 1040; Goodright v. Holton  
Barnes, 119; Thurstont v. Bedwell, 2 Wils.  
7; Doe d. Payne v. Grundy, 1 B. & C. 264; S.  
C. 2 D. & R. 437; Underhill v. Dentreux, 1  
Saund. 72, n. (a), 6th edit.; Doe d. Taylor, v.  
Eriap, 7 Dowl. 584.

2. A claimant who is substituted for the defendant under an interpleader rule, is entitled to call upon a foreign plaintiff for security for costs. *Benasch v. Bessett*, 1 C.B. 343. See *The Edinburgh and Leith Railway Company v. Dawson*, 7 Dowd. P. C. 573.

3. A motion for security for costs may be made, notwithstanding the defendant is under terms to take short notice of trial, or such notice as the plaintiff can give, provided issue be not joined. (*West v. Cooke*, 1 C. B. 312. See *Muller v. Gernon*, 3 Taunt. 272; *Steel v. Lacey*, 3 Taunt. 273, n.; *De Montellano v. Garcias*, 1 Bing. 67; 7 J. B. Moore, 200.)

1. *Higher scale*.—Where the plaintiff, in an action of assumpsit for unliquidated damages, had recovered a verdict for 20*l.*, and the Master had taxed his costs on the higher scale, the Court of Queen's Bench set aside an order of

**TENDER:**

The plaintiff sued for 191. 8s. ; the defendant took out a summons to stay proceedings on payment of £1. 18s. and costs, which the plaintiff declined to accept, claiming to be entitled to more; the £1. 18s. was afterwards paid into court, and ultimately taken out by the plaintiffs, and a *nol. pros.* entered as to the residue: *Held*, that the defendant was not entitled to the costs of the proceedings subsequent to the tender, it being sworn, on the part of the plaintiffs, that the larger sum claimed was actually due to them, but that they had declined to proceed with the actions from motives of prudence. *Watson v. Coleman*, 7 M. & G. 422. See *Edwards v. Harrison*, 11 Price, 533; *Hale v. Baker*, 2 Dowl. P. C. 125; *Gosser v. Elkins*, 6 Dowl. P. C. 335.

And see BANKRUPT: Jurisdiction. ASTOR-  
NEY: Agency: Lien.

## IX. LAW OF ATTORNEYS.

### ADMISSION.

*Welsh roll.*—A Welsh attorney, duly admitted an attorney of the courts at Westminster, under the 11 G. 4, and 1 W. 4, c. 70, having, by neglect of his agent, practised without a certificate before the passing of the 6 & 7 Vict. c. 73, he was, upon producing the proper document, permitted to sign the roll of attorneys.

*Semie*, that since the latter act, a rule for readmission is unnecessary and improper. *Hugh Roberts, ex parte*, 6 M. & G. 1049. See *Water, ex parte*, 2 M. & Senth. 618; *Thompson, ex parte*, 6 N. Cl. 380; 7 Scott, 343; *Martin, ex parte*, 5 M. & W. 1.

**AGENCY:**

"A bill for agency business is not taxable, under the 6 & 7 Vict. c. 73. *In re Gedge, Gedge v. Elgie*, 2 D. & L. 915. See, *re Simons*, 2 D. & L. 500; *Cardale v. Bull*, 4 Q. B. 614; *Jones v. Roberts*, 8 Sim. 197.

## LIEN.

A judgment signed by the plaintiff's attorney after notice that the plaintiff had released the action, in which he had obtained a verdict for nominal damages, upon payment by the defendant to the plaintiff of a sum of money for debt and costs, considerably less than the amount of taxed costs, in the absence of the plaintiff's attorney, was set aside without costs. *Clark v. Smith*, 6 M. & G. 1051.

Cases cited: *Nelson v. Wilson*, 6 Bing. 568; 4 M. & P. 385; *Gould v. Davis*, 1 Tyrwh. 380; 1 Dowl. P. C. 288; 1 C. & J. 415; *Jordan v. Hunt*, 3 Dowl. P. C. 666; *Toms v. Powell*, 6 Esp. N. P. C. 40; *Swain v. Senate*, 2 N. R. 99; *Graves v. Eades*, 5 Taunt. 429; *Chapman v. Ilaw*, 1 Taunt. 341; *Nelson v. Wilson*, 6 Bing. 568; 4 M. & P. 385; *Gould v. Davis*, 1 Tyrwh. 381; 1 C. & J. 415; 1 Dowl. P. C. 288; *Young v. Redhead*, 2 Dowl. P. C. 119.

## MALPRACTICE.

Where an attorney, who was entrusted by executors with a sum of money to pay certain legacy duties, had given an undertaking so to apply it, but had failed to do so, the Court of Queen's Bench refused to exercise its summary jurisdiction to compel him to refund the money, it not appearing that he had been otherwise employed by the executors in his professional character, or that the employment in question was one which it necessarily required an attorney to perform. *In re Webb*, 2 D. & L. 932. See *In re Atkin*, 4 B. & A. 47; *ex parte Bodenham*, 8 A. & E. 959.

## PARTNER.

Y. and S. were attorneys in partnership. S. gave an undertaking that, in consideration of the plaintiff in an action giving the defendant in that action his discharge from custody, "we hereby agree" to pay such plaintiff the debt and costs on a day named. S. signed this, "Y. and S., defendant's attorneys," but afterwards struck out the words "defendant's attorneys." It was not proved that the defendant had employed the firm, but only that S. had been employed by him to wind up his affairs; nor was any evidence given of recognition or knowledge by Y. or of authority from him to S., by previous practice or otherwise, to give such a guarantee.

Held, that Y. was not liable on the guarantee. *Hastleham v. Young*, 5 Q. B. 833. See *Hedley v. Bainbridge*, 3 Q. B. 316; *Lery v. Pyne*, Car. & M. 453; *Sandilands v. Marsh*, 2 B. & Ald. 973; *Duncan v. Lowndes*, 3 Camp. 478. See Notes on this case, p. 252, ante.

## SIGNED BILLS.

In an action on an attorney's bill, a plea of the non-delivery of a signed bill is an issuable plea. *Wilkinson v. Page*, 6 M. & G. 1012.

Cases cited: *Staples v. Holdsworth*, 4 New Cases, 144; 5 Scott, 432; *Mackey v. Wood*, 7 M. & G. 420; *Humphreys v. Earl of Waldegrave*, 6 M. & W. 627; 5 Dowl. P. C. 768; *Holmes v. Grant*, 1 Gale, 59; *Beck v. Mordaunt*, 2 New Ca. 140; 2 Scott, 178; 4 Dowl. P. C.

112; *Willis v. Hallett*, 5 New Ca. 465; S. C. per nom. *Wilson v. Allean*, 7 Scott, 474.

## TAXATION.

1. *Costs of*.—Where an order to refer an attorney's bill to taxation, had been obtained before the passing of the 6 & 7 Vict. c. 73, and the Master's allocatur had since been made, by which he taxed off less than a sixth of the bill: Held, that the case came within the exception clause in the statute, and that the court had power to make an order on the client to pay the costs of the taxation. *Doe d. Potts v. Jinders*, 2 D. & L. 986.

Cases cited: *Baker v. Mills*, 8 Bing. 83; S. C. 1 M. & Scott, 159; 1 Dowl. 251; *Elwood v. Pearce*, 2 Dowl. 382; S. C. 2 Cr. & M. 415; *Morris v. Parkinson*, 3 Dowl. 744; S. C. 2 C. M. & R. 178; *Hodge v. Bird*, 1 D. & L. 956; *Binns v. Hey*, 1 D. & L. 661.

2. The 6 & 7 Vict. c. 73, repeals the 2 G. 2, c. 23, except as to "matters and things done" before the passing of the latter act.

Where an attorney's bill was taxed before the passing of the latter act: Held, (*hesitante Cresswell*, J.) that the jurisdiction of the court as to altering the costs of taxation, was not taken away.

Under the former act, where an attorney's bill has been reduced upon taxation by a substantial sum, though less than one sixth, the client was entitled to the costs of the taxation. *Hodge v. Bird*, 6 M. & G. 1020.

Cases cited: *Barker v. Bishop of London*, Barnes, 147; *Mills v. Rinett* 1 A. & E. 856; *Elwood v. Pearce*, 8 Bing. 83; 1 M. & Scott, 159; 1 Dowl. P. C. 251; *Baker v. Mills*, 2 C. & M. 415; 4 Tyrwh. 279; 2 Dowl. P. C. 382; *Holderness v. Bakworth*, 3 M. & W. 341.

## UNDERTAKING.

1. Where the attorney of the defendant had given an undertaking to pay the debt, in consequence of which the plaintiff stayed proceedings, the Court of Queen's Bench enforced the undertaking, although it was void under the 4th section of the Statute of Frauds. *In re Hiltiard*, 2 D. & L. 919.

Cases cited: *Carrington v. Roots*, 2 M. & W. 248; in re Greaves 1 Cr. & J. 374, n.; *Evans v. Duncombe* 1 Cr. & J. 372; in re Paterson, 1 Dowl. 468; in re Hayward, 11 T. 1841.

2. Where the attorney of a mortgagor, who was desirous of selling the property, had induced the attorney of the mortgagee to give up the title-deeds, &c., on his undertaking to pay him the costs of preparing the abstract of title, &c., the Court of Queen's Bench granted a rule, ordering him to pay the amount pursuant to his undertaking. *In re Gee*, 2 D. & L. 997.

[Here we close the First Series of the Digest. We have been expecting to receive some new numbers of Irish Reports and Criminal Law Reports, but they have not arrived in time, and therefore must be included in the next series.]

It may be convenient to sum up and refer to the several sections already given, before we proceed to the *Second Series*. They are as follow:

*Courts of Equity:*

1. Principles of Equity . . . page 209
2. Pleadings . . . . . 243
3. Practice . . . . . 244
4. Costs . . . . . 247

*Ecclesiastical Courts* . . . . . 285

*Appeals:*

- English and Irish . . . . . 287
- Scotch and Colonial . . . . . 289
- Ecclesiastical and Admiralty . . . . . 291

*Patent Cases* . . . . . 292

*Common Law Courts:*

1. Construction of Statutes . . . . . 333
2. Grounds of Action and Principles of Common Law . . . . . 358
3. Pleadings . . . . . 382
4. Evidence . . . . . 408
5. Practice . . . . . 411
6. Bankruptcy . . . . . 433
7. Arbitration . . . . . 435
8. Costs . . . . . 436
9. Law of Attorneys . . . . . 436

In our next Series we shall incorporate with the others, a Digest of the Original Reports in the Legal Observer, comprised in the present volume. Each volume will contain, besides a general reference to each section in the "Contents," an Analytical Table of Titles, with the names of the Cases.]

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### *Kolls Court.*

#### SOLICITOR.—AUTHORITY.

*A solicitor who was employed by a defendant to appear for her and consent to a decree, Held, not justified in procuring an order for changing the defendant's former solicitor, and appointing himself solicitor in the cause, without informing his client, though that order was necessary to enable him to carry into effect the instructions he has received; still less in appearing under the order thus obtained in the Master's office.*

THIS was a motion to discharge an order for changing the solicitor of a defendant, on the ground of its having been irregularly obtained. It appeared that after the cause had been brought to a hearing, it was discovered that this defendant had not been duly served with

the subpoena to hear judgment. The defendant had in the earlier stages of the cause appeared by the same solicitor who appeared for several other defendants, and application was made to this gentleman by the plaintiff to remedy the omission, by consenting to the decree. However, these applications were not attended to, and the plaintiff then induced the defendant to appoint another solicitor to appear for her, and consent to the decree. But this the solicitor considered that he could not do, without being appointed solicitor in the cause; and therefore, without consulting the defendant or her former solicitor, he procured a common order for changing the defendant's solicitor, and appointing himself solicitor in his stead. Under this order he afterwards attended in the Master's office, whereby the defendant became apprised of what had been done, and hence arose the present motion.

Mr. Turner and Mr. Borrett, for the motion.

Mr. Kindersley, contra.

Lord Langdale, after stating the facts of the case, observed, that although the solicitor was right in supposing that it was necessary for him to be appointed solicitor in the cause, for the purpose of consenting to the decree, yet as he had no authority to obtain the order for changing the defendant's solicitor, he ought to have communicated the necessity to her former solicitor before he obtained the order. But not only was he wrong in this respect, but still more so in going on to act as solicitor, after he had given his consent to the decree; for by that act he was *functus officio*, and should have informed the original solicitor of what had been done. However, he would not discharge the former order, because that would have the effect of opening the decree. But he should order the solicitor to pay the costs of that order, and the order reappointing the defendant's former solicitor, as well as the costs of this motion.

*Bradstock v. Whitley.* Feb. 25, 1846.

### *Vice-Chancellor of England.*

#### CREDITOR'S SUIT.—CONDUCT OF THE CAUSE.

*Where it appears that it may be more beneficial to the parties interested in a creditor's suit, that the conduct of the cause should be given to another solicitor, the court will make an order for the purpose, although there may be no complaint on the ground of want of diligence.*

THIS suit had been instituted for the administration of the estate of the intestate in the pleadings named, and a motion was now made on behalf of four of the creditors, that they might be at liberty to carry in any state of facts they might be advised, and that their solicitor might have the future conduct of the cause. The death of the intestate took place in 1844. Administration to his estate was taken out on the 8th of March, 1845. The bill was filed the 5th of May, 1845; the answer was put in the

17th July, 1845, and the decree for a reference to the Master to take the usual accounts, was obtained on the following day.

Mr. Stuart and Mr. Piggott for the motion, said, that the remainder of the property belonging to the estate now to be collected consisted principally of debts at Newfoundland, where the creditors who made the application, or their partners or agents resided, and they offered a guarantee for duly accounting for all monies that might be received by them or their agents at Newfoundland. It was true there had been no want of diligence in the conduct of the cause; but the solicitor for the plaintiff being also the solicitor for, and son-in-law of the defendant, and he having concealed from the creditors the existence of the suit for several months after it was instituted, although in frequent communication with them, they had not confidence that the estate would be properly administered.

Mr. James Parker and Mr. Shebbeare, in opposition to the motion, said, that the application rested solely on the allegation that the parties believed that the accounts would not be properly taken; but if there was any foundation for that belief, the master had the power by the 76th of the general orders of 1828, to require that any of the parties should be represented by a different solicitor, and, by the 56th of the same orders, if there was any want of diligence, to commit the prosecution of the decree to another solicitor. There was, however, no pretence for the application, as the property of the intestate was sworn under 4,000*l.*, of which 3,186*l.* had been collected, and 3,100*l.* paid into court.

The Vice-Chancellor said, he should make the order, but not on the ground of mismanagement in the conduct of the cause, of which there did not appear to have been any. It was, however, a remarkable fact, that during all the communications between the solicitors for these creditors, and the plaintiff's solicitor, no intimation should have been given by the latter of the existence of this suit. There might have been a good reason for this silence, but none was stated. It was also a material fact, that great benefit might accrue to the creditors by granting the motion, because the parties applying agreed to give an undertaking to account for all sums received in Newfoundland, and there would thus be a check on them by the plaintiff, while they would also have a check on the plaintiff in respect of the transactions in England.

Mr. James Parker suggested, that the order as to the papers in the suit should be confined to inspect and taking copies; whereas the notice of motion asked that they should be delivered up. He cited *Bennett v. Baxter*, 10 Sim. 417.

The Vice-Chancellor, after consulting with the registrar, said, the usual terms were; that the new solicitor should be at liberty to inspect and take copies, and the order must therefore be in that form.

*Bird v. Bird*. Feb. 27, 1846.

### Queen's Bench.

(Before the Four Judges.)

#### PLEADING.—BILL OF EXCHANGE.

*In an action by an indorser against the acceptor of a bill of exchange, the acceptor cannot set up as a defence to actions, that at the time he accepted the bill the drawer was an uncertificated bankrupt, and that all his property had passed to his assignees.*

THIS was an action by the indorsee against the acceptor of a bill of exchange. The defendant pleaded, that before and at the time when the bill was drawn, the drawer was a bankrupt; that assignees under the commission had been appointed; that all the property belonging to the drawer had passed to the assignees; and that he had not obtained his certificate. To this plea there was a demurrer, on the ground that it was no defence to the action.

Mr. Peacock in support of the demurrer.

The defendant accepts the bill payable to the drawer or his order, he therefore holds out to the world that there is a debt due from the defendant to the drawer which is capable of being transferred, and he cannot afterwards say, that at the time he accepted the bill the drawer was not in a situation to draw a bill payable to his own order. In *Pitt v. Chapelow*,<sup>a</sup> the action was by indorsee against the acceptor, and the plea was, that the drawer was an uncertificated bankrupt, that his property had passed to his assignees, and that he had indorsed the bill without any right or authority to do so. The plea was held bad, and Lord Abinger, C. B., said, "I think the defendant is estopped from setting up such a defence. If the law were otherwise, what a convenience it would afford for parties desirous to raise money upon bills on which they never meant to be liable, to get them drawn and indorsed by an uncertificated bankrupt, or one who had not paid 1*s.* in the pound under a second commission."

Mr. Lush, contra.

*Prima facie*, a bill of exchange imports consideration, and the law will not presume this to be an accommodation bill. But the law will allow a plea which sets up facts that constitute an answer to what is merely a *prima facie* presumption. The plea here is good. The case of *Kitchen v. Bartsch*,<sup>b</sup> is in point; that was an action against the maker of a promissory note, and it was held a good plea that the plaintiff was an uncertificated bankrupt, and that the assignees required the defendant to pay to them the money claimed by the plaintiff. All subsequent acquired property would pass to the bankrupt subject to the right of the assignees: If there were any facts to show that this would not pass to the assignees, those facts should have been replied.

Mr. Peacock in reply.

The holder cannot know all these circumstances relative to the drawer; he takes the bill on the credit of the acceptor. In the case cited, the

<sup>a</sup> 8 Mee. & Wel. 661.

<sup>b</sup> 7 East, 53.

plaintiff was the bankrupt, but hers the drawer as the bankrupt, and the action is brought by an indorsee for value. The drawer has got the value of the bill by indorsement, and the defendant is estopped from saying he cannot pay, because the property is in the assignees.

Lord Denman, C. J. I cannot help thinking that Lord Abinger is high authority on such a subject as this. It is quite clear what his opinion was; and it seems to me that that opinion is founded on good reason and principle. All the parties here knew whether the bankrupt had power to pass the bill or not. The party accepting it certainly knew. He admitted himself to be in that position in which he knowingly gave the bankrupt power to transfer the bill. On this short and simple ground, it seems to me that the plaintiff has a good right of action. The case of *Kitchin v. Bartch* seems in the way of this decision, but when it is considered that this is not an action by the bankrupt himself, but in an action against the person who with full knowledge gave him the power on which that right of action is founded, it does not appear to me that that case can affect the present. The argument turns in a circle; for when the acceptor says, as he does by his acceptance, "I will pay this in the order of the bankrupt," another man has a right to say, "I expect you to pay that to which you have thus given circulation."

Mr. Justice Patteson. There is no authority in favour of the defendant. *Pitt v. Chappell* says that the acceptor is estopped from saying that the person who has drawn a bill which he has accepted had no power to draw it. Here it is that Lord Abinger's observations became applicable; they are very strong and ought to be decisive.

Mr. Justice Coleridge. I am of the same opinion, and I rely on the stipulation in the acceptance as valid against the acceptor, in so far as any third persons are concerned. The acceptor has signed with full means of knowledge. Is he after that to turn round and say, because the person whose call on me I promised to answer, had, as I knew, no legal right to enforce that call, I will not pay what I promised I would pay? There is a great distinction between this case and the case of the drawer himself.

Mr. Justice Wightman. The indorsement was for value; the acceptance was the same; and the plaintiff is a bona fide holder, and in my opinion, the case of *Pitt v. Chappell* is in point. There the bankrupt himself sued, and what might have been an available defence against him, would not be so on the part of the acceptor against a person who had acted on the acceptor's own authority in making the transfer to the bankrupt. *Pitt v. Chappell* is a good authority. We should be embarrassing dealings in instruments of this kind, if on the grounds here relied on, we said that a good defence could be set up.

*Braithwaite v. Gubder*. *Whitby Term, 1846*

7 East, 581. 2 B. & W. 1016.

### Queen's Bench Division.

WRIT OF EXECUTION, RETURN OF SCIRE FACIAS BEFORE SUNDAY, SECOND WRIT, WHEN UNNECESSARY.

If a writ, or other final process, returnable upon execution, be issued within a year and a day of judgment, but not pronounced no satisfaction, another writ (even if it had different from the first) may be issued at any time after wards, without previously returning the first writ, or issuing a scire facias.

Peterdoff had obtained a rule calling upon the plaintiff to show cause why a writ of *scire facias* should not be returned for irregularity, under the following circumstances. An action having been brought against two persons named Hodgkinson and Beale, the plaintiff obtained a final judgment against them on the 6th of Jan. 1846, and on the same day issued a writ of execution, returnable immediately upon the sheriff, against both. Upon this writ Hodgkinson was taken, and the sheriff's officers were discharged under the Insolvent Act. Against Beale the sheriff's officers took nothing done; the plaintiff having given directions to the sheriff not to execute the writ as to him. No further proceedings were taken in the action until the 15th of January 1847, when a writ of *scire facias* was issued upon the same judgment, although no *scire facias* had been sued out, and although no return had been made to the *ca. sa.*, which writ remained in the sheriff's hands. Under that writ Beale's goods had been seized to satisfy the judgment; and the present application was made on his behalf.

Pigott, now (Jan. 30) showed cause. A writ of execution may be sued out within a *scire facias*, although more than a year and a day have elapsed since the date of the judgment, if a previous writ of execution has been issued within the year. (2 *Ridd*, 134.) Formerly, before suing out a second writ, the first must have been returned and filed, and continuances entered on the roll; but now, when writs are made returnable upon execution, (as was the case with the *ca. sa.* in the present instance,) and not on a certain day, they continue to run until executed; and consequently, in such cases, the old formalities need not be observed. *Simpson v. Heath*, 7 Dow, 822; *Greenhalgh v. Harris*, 2 Dow, N. S. 271; *Hamer v. Johnson*, 14 M. & W. 386, Q. B. A second writ of execution might always, and may still be issued without a return of the first, where the latter has produced no satisfaction. *Dickson v. Farn*, 10 Bing. 341; *Kings v. Colley*, 5 Ad. & N. 284. Now the arrest of one of two defendants, is no satisfaction by the other. *Stytle v. Mercer*, 2 Show. 394; and in *Nadiv. Battie*, 15 Pat. 147, it was decided that if one of several defendants be arrested upon a writ, and discharged under an Insolvent Act, the goods of the others may, by afterwards issued under a *fi. fa.* The judgment of the Court is in favour of Jones, Q. B. N. 1846, in the second case.

*Peterdora* ~~was~~ ~~contended~~ That a second writ of execution of a kind different from the first could not be issued after a year and a day, without returning the first writ, or suing out a *scire facias*, where such first writ had been in part executed. 2. That inasmuch as the defendant, who had been taken under the *ca. sa.* had been discharged from custody by operation of law, and as that writ had not been executed against the other defendant at the plaintiff's request, it was, in effect, the same as if no execution had been issued within the year; and therefore, that a *scire facias* was necessary before the *fi. fa.* could be sued out.

*Cir. adv. out.*

*Williams, J.* in the present vacation, (Feb. 17,) delivered judgment:—The question is, whether, in order to justify the issuing of the *scire facias*, a return should have been previously made to the *ca. sa.*, or whether it be sufficient that materials exist for completing the roll. It is clear that there are such materials in this case; because, as the *ca. sa.* remains with the sheriff unexecuted as to one of the defendants, a return of *non est inventus* may be made as to him; and on the authority of *Greenshields v. Harris*, I think that the rule must be discharged, but without costs.

Rule discharged without costs.

*Franklin v. Hodgkinson and Beul.* Hilary Term, 1846.

#### Common Pleas.

DECLARING IN TIME WITHIN THE MEANING OF RULE 35, H. T. 2 W. 4.—WAIVER BY DEFENDANT.

A plaintiff in an action must not only file, but also give notice of his declaration within one year after the process is returnable. The absence, however, of the notice is an irregularity which may be waived by the defendant, and to ascertain that the court will grant a reference to the master.

In this case the defendant had been served with the writ of summons on the 20th of April, 1844, and the declaration was filed on the 1st of May following; notice, however, of the latter was not given to the defendant until the 1st of December, 1845. On an affidavit of these facts, a rule had been granted, calling upon the plaintiff to show cause why the declaration and the notice thereof, as well as all subsequent proceedings, should not be set aside for irregularity, with costs; the ground of objection being that the plaintiff had not declared in time within the meaning of the rule of H. T. 2 W. 4, c. 35, and the cases of *Grey v. Saunders*, *Barcoe*, 249; *Hutchinson v. Brown*, 7 T. R. 296; *Weddle v. Basier*, 1 Cr. & M. 69, were cited.

*Talford, Serjeant*, now showed cause. Bearing in mind that service of the writ of summons had been effected on the 20th of April, 1844, the plaintiffs are prepared to show that the subsequent delay was at the defendant's own soli-

citation. The affidavit of the former states, that on the service of the writ, the defendant asked for time, which was allowed him, and this indulgence had been afterwards similarly renewed. It was further sworn, that the plaintiff had forborne to take the usual proceedings, in consequence of repeated promises to pay made by the defendant's agent, and therefore it was submitted the rule should not be made absolute.

*Cresswell, J.* The rule is positive to the effect, that the plaintiff shall be deemed out of court, unless he declare within one year after the process is returnable.

*Byles, Serjeant, contra.* The defendant has made an affidavit swearing that he never had any communication with the plaintiff on the subject of the present action, and that he never authorized any arrangement on his behalf.

*Maule, J.* The plaintiff swears to a particular affirmative, and the defendant to a general negative. The former is most to be relied upon.

*Byles, Serjeant.* This is a nullity, and cannot be waived.

*Maule, J.* It is a rule of practice for the benefit of the defendant.

*Tindal, C. J.* The application is rather against good faith, when the defendant is himself the cause of the delay.

*Byles, Serjeant.* But I must again submit that there is in that respect oath against oath.

*By the Court.* If there has been no waiver, then it is clear there is no declaration within the proper time. There is such an irregularity as entitles the defendant to set the proceedings aside, unless the plaintiffs can show a waiver; and it must be referred to the Master to look at the affidavits, and say whether there has been a waiver or not, and to discharge or make absolute the rule accordingly.

*Danley and another v. Nind.* Hilary Term, 1846.

#### ACTION ON A BOND.—PARTICULARS OF THE BREACHES BEFORE PLEA.

The court will not grant a rule nisi for the delivery of particulars of breaches, where the declaration in an action on a bond is in the general form, it appearing that considerable delay would be the result.

Semble, that no such application can be made, at least until after the plaintiff has replied.

THIS was an action of debt against a surety on a bond conditioned for the performance by the principal of a variety of duties, and the plaintiff had declared generally, as on a common money bond.

*Dowling, Serjeant*, now moved for a rule to show cause why the plaintiff should not be compelled to deliver particulars of the breaches complained of.

*Maule, J.* There is no necessity for this application. Suppose you plead setting out the condition of the bond on oyer, the plaintiff will then reply, setting out breaches or specially assigning them. I must refer to the very excellent note on this subject in *Saunders* (3 vol. 187.)



**Dowling, Serjeant.** In Arch. Pr. 1029, it is laid down generally, that "the defendant may call for a particular of the breaches for which he is sued;" and for this, Tidd, 9th. ed. 597, is cited, where the rule is laid down in similar terms.

**Moule, J.** *Sowler v. Hitchcock*, 5 Dowl. 724, is the only case on the point, and the decision seems rather strange, as it appears to have been a cause within the statute of 8 & 9 W. 3, c. 11. When was the declaration delivered?

**Dowling, Serjeant.** It was delivered about three weeks ago.

By the Court. This would throw the case over until next term, as we do not like to send it before a judge at chambers, having been once there already,\* and that we cannot permit. If, when the replication is put in, it be not found sufficient, the defendant can then apply to a judge at chambers for particulars.

Rule refused.

*Melville v. Provost.* Hilary Term, 1846.

### Exchequer.

#### BILL OF PARTICULARS. — ENGINEER. — RAILWAY COMPANY.

*In an action by an engineer against a railway company, it is sufficient to state in the bill of particulars, that the plaintiff claims a certain sum in respect of a survey, without saying what time he was engaged upon it, or how many persons were employed, or the rate of charge per mile; nor need he particularly describe the trial sections and books of reference.*

WITH a declaration for work, labour and materials, the following bill of particulars was delivered:—

"This action is brought to recover the amount of the following items of account:—

1845, June.—A preliminary survey of the Derby, Uttoxeter and Stafford railway, including the examination of the country, taking trial sections, attending public meetings at Uttoxeter, attending committees and other meetings, and travelling expenses . . . 343 0 0

Nov. 4.—The survey of 36½ miles . . . 1,460 0 0

The survey of the Burton branch, also the alternative line C to Baswick, also alternative line D to Grand Junction Railway, 10½ miles in all . . . 630 0 0

Nov. 7 to 30.—Time and expenses of surveyors, and assisting the solicitor with books of reference, both in the country and in London . . . 320 0 0

Engraving 33 plates of plans . . . 825 0 0

Paid for copperplates . . . 129 0 0

Printer's account . . . 67 4 0

£. 3,774 4 0

\* An unsuccessful application had been made to Coltman, J.

"Above are the particulars of the plaintiff's demand." &c.

A summons was taken out for further and better particulars, and was heard before Alderson, B., who refused to make any order.

**E. James** made a similar application to the court upon the affidavit of the defendants' attorney, which stated that the defendants were sued as provisional committee-men of the Uttoxeter and Stafford railway company, by the plaintiff, who was engineer of the company; that the deponent never saw any of the work done, or any of the books of reference, and unless better particulars were delivered, the defendants could neither proceed with their defence nor ascertain the amount which they ought to pay into court. It was submitted that the particulars ought to state the length of time the plaintiff was engaged in the survey, the number of persons employed about it, and the rate of charge per mile. The trial sections and books of reference should also have been particularly described.

**Pollock, C. B.** We ought not to grant the application. Here is a charge in gross for work done as an engineer, which embraces many items, and the case resembles that of an action for goods sold and delivered, where it is sufficient to state in the particulars, that the plaintiff claims a certain amount for goods supplied. It is argued that the plaintiff ought to state how much per mile he claims for the survey, but there would be difficulty in doing that, as the trouble in making the survey might vary in different places. Then as to the books of reference, the provisional committee-men must know very well that the standing orders of parliament require that so much of such books as relate to any parish, shall be deposited with the clerks of that parish, and that copies shall also be deposited with the clerks of the peace. If, however, the defendants can swear that they know nothing about these books they can apply to a judge at chambers on fresh affidavits.

**Parke, B.** The plaintiff has given information as to the general nature of his demand, and that is sufficient. He says he claims in respect of a survey, and gives the number of miles, and the branches. Then as to the books of reference, the defendants, to whom they were supplied, must be taken *prima facie* to have them in their possession, and consequently to know the nature as well as the number of them.

**Platt, B.**, concurred.

Rule refused.\*

*Higgins v. Ede and another.* Hilary Term, 24th Jan. 1846.

### Court of Bankruptcy.

**Semble.** That the commissioner will not refuse to approve of a bond, entered into by a debtor and sureties, under 1 & 2 Vict. c. 110, s. 8, because no more than two days' notice was given to the town agent, of the

\* See *Rennie v. Beresford*, ante, p. 370.

intention to submit the bond and sureties for approval.

A creditor, with the view of making a trader debtor a bankrupt, filed an affidavit in this court, pursuant to the stat. 1 & 2 Vict. c. 110, s. 8, and on the 14th February last, a copy of such affidavit with a notice in writing, requiring immediate payment of the debt, was personally served on the debtor, who resided at Leeds. About four o'clock in the afternoon of the 4th March instant, the town agent, the creditor, and his attorney, (also residing at Leeds,) was served with notice, that the debtor had entered into a bond with two sufficient sureties according to the statute, and that the bond and affidavits of sufficiency would be submitted to the rotation commissioner at the Court of Bankruptcy, on Friday the 6th March, at 12 o'clock.

The town agent of the creditor appeared before Mr. Commissioner Fane at the time specified in the notice, and after stating the foregoing facts, added, that he had that morning received a letter from the country attorney, stating that the proposed sureties resided twenty miles from the town of Leeds, and that it was impossible to make any satisfactory inquiries as to their sufficiency, within the time specified in the notice.

Mr. Commissioner Fane, after perusing the 8th sec. of the stat. 1 & 2 Vict. c. 110, observed, that it was quite clear there had not been sufficient time to inquire into the sufficiency of the proposed sureties. Still, the debtor had complied with the provision of the act of parliament, and he felt great difficulty in deciding without more information, that the sureties were not sufficient. He directed the matter to stand over to the next day (Saturday), and perhaps that morning's post would bring the town agent further information as to the sufficiency of the proposed sureties.

On Saturday, the 7th instant, Mr. Bagley appeared on behalf of the creditor, and objected to the approval of the bond, on the ground that the creditor's attorney had not sufficient time to inquire into the sufficiency of the proposed sureties.

Mr. Commissioner Fane inquired if the town agents had received any further communication from their country client?

Mr. Bagley replied, that there had been no further communication, nor could it be expected, inasmuch as the country attorney could not have anticipated the course adopted by his Honour, in adjourning the consideration of the matter from the day fixed by the debtor. Had the matter been disposed of, as usual in those cases, on the day appointed, inquiries made by the country attorney would have been too late, and therefore attended with useless expense to the creditor.

Mr. Commissioner Fane. That may be so; but I am unwilling to say that a man shall be made a bankrupt, and all his prospects in life perhaps destroyed, upon an objection of this nature, when he has entered into the bond pre-

scribed by the act of parliament. This law, which enables a creditor upon a mere affidavit of debt to make his debtor a bankrupt, is a very harsh provision.

Mr. Bagley observed, that the stat. 1 & 2 Vict. c. 110, which, by section 8, created the new act of bankruptcy alluded to, conferred great benefits on debtors, by abolishing arrest on mesne process. He then called attention to the course of proceeding laid down by Mr. Commissioner Holroyd, in cases under this statute, as published in Ayrton on Bonds, page 10. The 3rd regulation was in these words:—"The notice should be 24 hours at least, if the creditor and the debtor's proposed sureties reside in town, and two days or more if the creditor or the debtor's proposed sureties reside elsewhere, according to the distance and means of communication." In the present case the creditor and the debtor's proposed sureties resided in Yorkshire, and although the debtor had 21 days to procure sureties and give notice, he had only given notice at four o'clock on Wednesday in London, for twelve o'clock on Friday, and considering "the distance and means of communication," it was impossible the creditor could have made satisfactory inquiries within the time, as to the sufficiency of the proposed sureties.

Mr. Commissioner Fane. There is no positive rule in respect of giving notice. If the debtor had given three days' notice, I should have held it sufficient. Two days' notice under the circumstances were not sufficient, but I cannot say the creditor has used due diligence, and if he meant to impeach the sufficiency of the affidavits made by the sureties, it could have been done by this day.

Mr. Bagley suggested, that the result of his Honour's decision would be, to encourage debtors to give notice at so late a period, as to render it impossible for creditors to test the solvency of proposed sureties.

Mr. Commissioner Fane. You may indict the sureties for perjury if they are insufficient, as they have sworn to their sufficiency. As the matter now stands, finding the bond and the affidavits of the sureties in the regular form, and no facts having been brought before me to impeach the validity of the one or the sufficiency of the other, I think I am bound to approve of the sureties, and I do approve of them accordingly.

In re Robinson. March 7, 1846.

## COMMON LAW SITTINGS.

Queen's Bench.

MIDDLESEX.

In Term.

- 1st Sitting—Thursday . . . . . April 10  
And two following days at Eleven o'clock.
- 2nd Sitting, Monday . . . . . April 20  
And subsequent days at Eleven o'clock.
- 3rd Sitting, Wednesday . . . . . May 6  
At  $\frac{1}{4}$  past Nine o'clock precisely, for Undefended Causes only.



# The Legal Observer.

SATURDAY, MARCH 21, 1846.

THE EDITOR'S LETTER BOX  
 Quod magis ad nos  
 Pertinet, et necesse malum est, agitur.

## THE REVIVAL OF READINGS AT THE INNS OF COURT.

It is now well known, that in the year 1831, we introduced into the long continued clause of the Lectures or Readings, Examinations and other legal Exercises, which originally existed in the Inns of Court, and the superintendence of which formed part of the bounden duties of these societies collectively constituting the great University of the Law. We did not indeed hesitate to characterise the negligence of the benchers for the time being, as amounting to a misapplication of the Revenues of the Inns of Court, and set forth the grievances in a long series of papers under that title. We at that time the benchers of these Inns are individually of the highest character in all respects—learned, upright, and enlightened;—but in their collective conduct they were unquestionably exposed to the gravest charges of dereliction of duty, and their sins of omission were of the most flagrant kind. They were the sole and uncontrolled governors of these societies or colleges, which were established, in order that within their walls, the science of the law should be taught and studied. It was in consideration of their undertaking to furnish the required instruction, that certain large and exclusive privileges were granted to them, and to the persons permitted by them to practice in the courts of justice. The task of general instruction and superintendence was undertaken by the benchers;—lectures more regularly delivered—exercises were established, and strict examinations were made before any persons were allowed to practice. All original and subsequent

grants and benefactions to the Inns of Court were made for carrying these purposes into effect. The benchers were trustees for the benefit of their respective societies. From the end of the 17th century, this system of education fell into disuse; the revenues of the Inns of Court were much misapplied;—the former system of instruction and examination was only burlesqued;—no lectures were delivered;—no examination made before a law degree was granted; and finally, this misappropriation of the revenues of the Inns of Court has been attended by serious evils, alike to the true interests of the profession in particular, and the public in general.

There can be no doubt that the appointment of competent persons to deliver lectures on the various branches of the law of this country, would produce the greatest advantages and benefits both to the profession and the public. There are difficulties in all sciences, and more particularly in the law, which, if explained orally, are readily understood, but which may take the student months to comprehend by means of books. It is true, that lectures on law are not the only means which can be taken to obtain a correct knowledge of it; but they form clearly one of the means; and joined with reading and observation, are most effectual in attaining the object of the student. Discourses delivered by a person thoroughly acquainted with a subject, selected on account of his knowledge of it, and graced by some powers of delivery, must be attended with advantage. These oral discourses on the law were adopted in the regular system of legal education in the time of our Cokes and Hales; and have been generally recommended by writers on legal education, as well ancient as modern. It is so clear that law lectures must be attended with

benefit to the student, that it is unnecessary to call one of the illustrious roll of witnesses who might be produced to give evidence of the fact.

The inns of court expressly constituted and endowed for legal studies, are peculiarly fitted for supplying the most able lecturers, at the smallest expense, and, in the most convenient situations. It was for this purpose they were erected; and greatly did they flourish whilst they attended to the wishes of their founders. Since, however, they have declined into mere clubs for dining, it is curious to see how irregularly the necessary demand for law lectures has been supplied. Driven from her proper haunts, the science of legislation took refuge in the two universities. A law professorship exists in each, but nearly in vain. At Oxford and Cambridge, English law is in little favour, and for the reason which Fortescue gave four centuries ago—because other things are there studied. Although the genius of Lord Coke were to enter the body of a wrangler, it would not add a leaf to his laurels; and Bearné would stand but a poor chance for a double first class. *The universities for the study of the law are the inns of court*—for that they were endowed; and to that must they come. Private lecturers have from time to time started up; some with more, some with less success; but none of whom have been permanent.—They have wanted the steady support of a public body; and, with few exceptions, they have not been of sufficient eminence to command success. More lately, professorships of English law have been instituted in London, at University College and King's College. The fault of these last lectureships is evidently this:—too much is attempted to be done. The whole range of the English Law is too great for any one man. If division of labour is found absolutely necessary in practice, still more is it so in lectures, where the professor should be a perfect master of the part of a science which he professes to teach, as the best guarantee of his being able to make it plain and simple to his hearers. This, then, appears to be the error of a general law professorship:—the lecturer may be a man of great ability, but his attention will be too much distracted by the variety of subjects which he professes to teach. He would be highly useful if he confined his labours to one branch, but cannot be expected to be, and in fact cannot be, sufficiently conversant in all. For these reasons

the law professorships in the London University Colleges, however useful they may be to the general student, will never be of great service to the law student. He requires practical lectures on various branches of the law, delivered by men who have made those branches their particular study. These are the lectures which are necessary for him; and these the inns of court are peculiarly fitted to give. So long ago as January 1831, we suggested the following as the proper course to be pursued:—

That the inns of court should appoint readers on all the different branches of the law, or at least on three. 1. On the principles and practice of the common law courts, and special pleading. 2. On conveyancing and the laws of property; and 3. On the principles and practice of courts of equity. The law of nations and the general principles of law might very properly be left to the several universities; but it is obvious, that practical lectures would be peculiarly appropriate as part of the plan of legal education adapted by the inns of court. It would be easy to find proper readers. The salary to each of them should be handsome; and the office would soon become an object to be aspired to. It would be proper to vest the appointment in the benchers; and they could well afford out of their present revenues to give the proper remuneration. Practical lectures would then be supplied to the members of the inns of court: the study of the law would be facilitated; and one of the main objects for which these societies were instituted would then be obtained. The delivery of lectures on the law by eminent men, selected for that purpose by the benchers of the various societies, would also greatly tend to settle and establish true principles of law. Much would be done by this means to benefit the science of English jurisprudence; and nothing, probably, would tend in a greater degree to forward all the useful purposes of a code,—to systematise, arrange, and condense the present scattered elements of law,—than distinct courses of lectures thus delivered by competent persons. Thus, the institution of readerships would not only be attended by direct benefits, but also by many indirect advantages.

At the time we put forward these views, there appears to have been a growing conviction of the necessity of establishing lec-

tures of the nature we then pointed out. We pretend not to have led the way, but we were unquestionably the first to give expression to the feelings of the profession, and to keep attention alive to the subject.

It is due to the attorneys and solicitors represented by the Incorporated Law Society, to notice, that soon after the completion of their hall and library in Chancery Lane, they instituted several courses of lectures, namely,—on Conveyancing, Equity, Common Law, Bankruptcy and Criminal Law. Barristers of eminence were invited to lecture, and accepted the appointments, each taking a distinct department. These lectures were commenced in 1833, and have been continued to the present time. In 1836 the judges revived the old rules of 1654, for examining persons applying to be admitted on the roll of attorneys and solicitors; and confided the duty to the council of the Law Society.

Our number for the 24th January last, (p. 254,) we laid before our readers a report of the proceedings of the benchers of the Middle Temple, for appointing a reader to that society on Jurisprudence and Civil Law; and we greatly rejoice to learn that the other Inns of Court are co-operating in the good work.

We had written thus far when we received the following communication, (which we most gladly insert,) from one of our learned contributors:—

MR. STARKIE, Q. C., being the reader of the present year, has, we believe, resolved to commence next Easter Term, in the hall of the Inner Temple, a course of readings or lectures, on different branches of the common law, for the benefit, as we understand, of all law students. We are not aware of any restriction being contemplated. And when we look to the ancient constitution of the Inns of Court, which were in fact an university, we do not see how, with propriety, these readings or lectures could be otherwise than open. The office of reader, which has been nominal for upwards of a century, was anciently of such consideration, that he would seem to have been the chief functionary of every Inn of Court. Thus, when Charles the Second visited Lincoln's Inn and the Inner Temple, the description of the ceremonial represents the reader as presiding. The great Lord Chancellor Nottingham was the

last who gave lustre to the office. In 1661, when Solicitor General, being reader of the year, we are told by Dugdale, that "he kept his feast in the Great Hall of the Inner Temple; to the honour of whom, and of the whole society, the king came in his barge from Whitehall," &c. We know not how it has happened that the reader of modern times should have so strangely resolved himself into a mere relic of ancient manners.

Mr. Starkie intends to revive the useful parts of his functions. The great learning of this gentleman, and the philosophic cast of his mind, peculiarly qualify him to lecture upon law as a science; but we venture most deferentially, to offer for his consideration the suggestion, that his own favourite subjects—the law of evidence and the criminal law, ought to occupy a large space in the proposed course of lectures. In the hands of so skilful an artist, the criminal law, in particular, illustrated by examples taken from remarkable trials, would furnish materials for extremely interesting, as well as instructive lucubrations. We believe that Mr. Starkie will treat on the law of libel, slander, &c. These subjects are well adapted for attractive and popular lectures. On the whole, this revival of legal instruction has our best wishes. The Inns of Court have indeed been tardy, but they are at last on the move. Whatever success, however, may attend their happest efforts, it must always be remembered, that the merit of being first in the field is not theirs. The solicitors have shown the way. The benchers follow placidly in the wake—yielding slowly, but not, we think, reluctantly, to an impulse which they perceive has been somewhat too long disregarded.

We understand the Benchers of the Middle Temple have elected a gentleman to lecture upon Jurisprudence and Civil Law. There were about twenty candidates for this office. We have not heard the name of the gentleman appointed.

## NOTES ON EQUITY.

### SALE OF EXPECTANCIES.—INADEQUACY OF PRICE.

It has been remarked by Sir William Grant, that courts of equity have extended such a degree of protection to heirs deal-

ing with their experiences, as almost to establish an absolute incapacity to bind themselves, reducing them in fact very nearly to the situation of infants, so as to guard them from the effects of their own conduct. Hence, in all cases of this character it is not merely incumbent upon the party contracting with the heir to show, in the event of the contract being subsequently challenged, that there has been no fraud; but he is, moreover, bound to make good the bargain in another way, by showing that a full and adequate consideration has been paid.

In a contract entered into between parties standing in *bona fide* and adequate equality of price, (unless it be such as of itself to betoken fraud,) is no ground for setting it aside. But inadequacy of price is of itself sufficient for this purpose, when ever it appears that the thing sold is a reversionary interest, and that the party selling is in the situation of an expectant heir, who is and has ever been an especial object of the favour of courts of equity. Disposing of the case of *Gowland v. De Faria*, Sir William Grant observed, that this was undoubtedly throwing a heavy burden on the purchaser, but in this particular description of case he was subjected to this burden on principles of public policy.

We have said this much in order to introduce some remarkable observations of Lord Cottenham on this subject, considering which, his lordship takes occasion to advert to what has fallen from Sir William Grant in *Gowland v. De Faria*. Lord Cottenham, advertent to that case, says:—

There are two propositions, one of which was established, and the other was supposed to be established in that case. The one was, that in a transaction with an expectant heir, it was necessary for the party seeking the benefit of that transaction to show that he gave adequate price. The proposition has been the subject of much observation, and it has been considered as interfering a good deal with that proper discretion, which persons who are capable, according to the laws of this country, of disposing of their property, ought to be at liberty to exercise. At the same time it does establish a rule, which has the effect of protecting persons who are, generally speaking, very much in need of protection. Of the policy of that rule, it is not my purpose to say any thing. That rule has been established in the case of *Gowland v. De Faria*, and has been recognized since.

But another proposition has been supposed to be established by that case, which is, that in transactions of this sort, the court has only to look at the value of the reversionary interest, calculated according to the tables fixed upon such proposition established by Sir William Grant in the case of *Sir William Grant v. Sir William Grant*, in 1801, viz. 9s. 10s. 11s. 12s. 13s. 14s. 15s. 16s. 17s. 18s. 19s. 20s. 21s. 22s. 23s. 24s. 25s. 26s. 27s. 28s. 29s. 30s. 31s. 32s. 33s. 34s. 35s. 36s. 37s. 38s. 39s. 40s. 41s. 42s. 43s. 44s. 45s. 46s. 47s. 48s. 49s. 50s. 51s. 52s. 53s. 54s. 55s. 56s. 57s. 58s. 59s. 60s. 61s. 62s. 63s. 64s. 65s. 66s. 67s. 68s. 69s. 70s. 71s. 72s. 73s. 74s. 75s. 76s. 77s. 78s. 79s. 80s. 81s. 82s. 83s. 84s. 85s. 86s. 87s. 88s. 89s. 90s. 91s. 92s. 93s. 94s. 95s. 96s. 97s. 98s. 99s. 100s. 101s. 102s. 103s. 104s. 105s. 106s. 107s. 108s. 109s. 110s. 111s. 112s. 113s. 114s. 115s. 116s. 117s. 118s. 119s. 120s. 121s. 122s. 123s. 124s. 125s. 126s. 127s. 128s. 129s. 130s. 131s. 132s. 133s. 134s. 135s. 136s. 137s. 138s. 139s. 140s. 141s. 142s. 143s. 144s. 145s. 146s. 147s. 148s. 149s. 150s. 151s. 152s. 153s. 154s. 155s. 156s. 157s. 158s. 159s. 160s. 161s. 162s. 163s. 164s. 165s. 166s. 167s. 168s. 169s. 170s. 171s. 172s. 173s. 174s. 175s. 176s. 177s. 178s. 179s. 180s. 181s. 182s. 183s. 184s. 185s. 186s. 187s. 188s. 189s. 190s. 191s. 192s. 193s. 194s. 195s. 196s. 197s. 198s. 199s. 200s. 201s. 202s. 203s. 204s. 205s. 206s. 207s. 208s. 209s. 210s. 211s. 212s. 213s. 214s. 215s. 216s. 217s. 218s. 219s. 220s. 221s. 222s. 223s. 224s. 225s. 226s. 227s. 228s. 229s. 230s. 231s. 232s. 233s. 234s. 235s. 236s. 237s. 238s. 239s. 240s. 241s. 242s. 243s. 244s. 245s. 246s. 247s. 248s. 249s. 250s. 251s. 252s. 253s. 254s. 255s. 256s. 257s. 258s. 259s. 260s. 261s. 262s. 263s. 264s. 265s. 266s. 267s. 268s. 269s. 270s. 271s. 272s. 273s. 274s. 275s. 276s. 277s. 278s. 279s. 280s. 281s. 282s. 283s. 284s. 285s. 286s. 287s. 288s. 289s. 290s. 291s. 292s. 293s. 294s. 295s. 296s. 297s. 298s. 299s. 300s. 301s. 302s. 303s. 304s. 305s. 306s. 307s. 308s. 309s. 310s. 311s. 312s. 313s. 314s. 315s. 316s. 317s. 318s. 319s. 320s. 321s. 322s. 323s. 324s. 325s. 326s. 327s. 328s. 329s. 330s. 331s. 332s. 333s. 334s. 335s. 336s. 337s. 338s. 339s. 340s. 341s. 342s. 343s. 344s. 345s. 346s. 347s. 348s. 349s. 350s. 351s. 352s. 353s. 354s. 355s. 356s. 357s. 358s. 359s. 360s. 361s. 362s. 363s. 364s. 365s. 366s. 367s. 368s. 369s. 370s. 371s. 372s. 373s. 374s. 375s. 376s. 377s. 378s. 379s. 380s. 381s. 382s. 383s. 384s. 385s. 386s. 387s. 388s. 389s. 390s. 391s. 392s. 393s. 394s. 395s. 396s. 397s. 398s. 399s. 400s. 401s. 402s. 403s. 404s. 405s. 406s. 407s. 408s. 409s. 410s. 411s. 412s. 413s. 414s. 415s. 416s. 417s. 418s. 419s. 420s. 421s. 422s. 423s. 424s. 425s. 426s. 427s. 428s. 429s. 430s. 431s. 432s. 433s. 434s. 435s. 436s. 437s. 438s. 439s. 440s. 441s. 442s. 443s. 444s. 445s. 446s. 447s. 448s. 449s. 450s. 451s. 452s. 453s. 454s. 455s. 456s. 457s. 458s. 459s. 460s. 461s. 462s. 463s. 464s. 465s. 466s. 467s. 468s. 469s. 470s. 471s. 472s. 473s. 474s. 475s. 476s. 477s. 478s. 479s. 480s. 481s. 482s. 483s. 484s. 485s. 486s. 487s. 488s. 489s. 490s. 491s. 492s. 493s. 494s. 495s. 496s. 497s. 498s. 499s. 500s. 501s. 502s. 503s. 504s. 505s. 506s. 507s. 508s. 509s. 510s. 511s. 512s. 513s. 514s. 515s. 516s. 517s. 518s. 519s. 520s. 521s. 522s. 523s. 524s. 525s. 526s. 527s. 528s. 529s. 530s. 531s. 532s. 533s. 534s. 535s. 536s. 537s. 538s. 539s. 540s. 541s. 542s. 543s. 544s. 545s. 546s. 547s. 548s. 549s. 550s. 551s. 552s. 553s. 554s. 555s. 556s. 557s. 558s. 559s. 560s. 561s. 562s. 563s. 564s. 565s. 566s. 567s. 568s. 569s. 570s. 571s. 572s. 573s. 574s. 575s. 576s. 577s. 578s. 579s. 580s. 581s. 582s. 583s. 584s. 585s. 586s. 587s. 588s. 589s. 590s. 591s. 592s. 593s. 594s. 595s. 596s. 597s. 598s. 599s. 600s. 601s. 602s. 603s. 604s. 605s. 606s. 607s. 608s. 609s. 610s. 611s. 612s. 613s. 614s. 615s. 616s. 617s. 618s. 619s. 620s. 621s. 622s. 623s. 624s. 625s. 626s. 627s. 628s. 629s. 630s. 631s. 632s. 633s. 634s. 635s. 636s. 637s. 638s. 639s. 640s. 641s. 642s. 643s. 644s. 645s. 646s. 647s. 648s. 649s. 650s. 651s. 652s. 653s. 654s. 655s. 656s. 657s. 658s. 659s. 660s. 661s. 662s. 663s. 664s. 665s. 666s. 667s. 668s. 669s. 670s. 671s. 672s. 673s. 674s. 675s. 676s. 677s. 678s. 679s. 680s. 681s. 682s. 683s. 684s. 685s. 686s. 687s. 688s. 689s. 690s. 691s. 692s. 693s. 694s. 695s. 696s. 697s. 698s. 699s. 700s. 701s. 702s. 703s. 704s. 705s. 706s. 707s. 708s. 709s. 710s. 711s. 712s. 713s. 714s. 715s. 716s. 717s. 718s. 719s. 720s. 721s. 722s. 723s. 724s. 725s. 726s. 727s. 728s. 729s. 730s. 731s. 732s. 733s. 734s. 735s. 736s. 737s. 738s. 739s. 740s. 741s. 742s. 743s. 744s. 745s. 746s. 747s. 748s. 749s. 750s. 751s. 752s. 753s. 754s. 755s. 756s. 757s. 758s. 759s. 760s. 761s. 762s. 763s. 764s. 765s. 766s. 767s. 768s. 769s. 770s. 771s. 772s. 773s. 774s. 775s. 776s. 777s. 778s. 779s. 780s. 781s. 782s. 783s. 784s. 785s. 786s. 787s. 788s. 789s. 790s. 791s. 792s. 793s. 794s. 795s. 796s. 797s. 798s. 799s. 800s. 801s. 802s. 803s. 804s. 805s. 806s. 807s. 808s. 809s. 810s. 811s. 812s. 813s. 814s. 815s. 816s. 817s. 818s. 819s. 820s. 821s. 822s. 823s. 824s. 825s. 826s. 827s. 828s. 829s. 830s. 831s. 832s. 833s. 834s. 835s. 836s. 837s. 838s. 839s. 840s. 841s. 842s. 843s. 844s. 845s. 846s. 847s. 848s. 849s. 850s. 851s. 852s. 853s. 854s. 855s. 856s. 857s. 858s. 859s. 860s. 861s. 862s. 863s. 864s. 865s. 866s. 867s. 868s. 869s. 870s. 871s. 872s. 873s. 874s. 875s. 876s. 877s. 878s. 879s. 880s. 881s. 882s. 883s. 884s. 885s. 886s. 887s. 888s. 889s. 890s. 891s. 892s. 893s. 894s. 895s. 896s. 897s. 898s. 899s. 900s. 901s. 902s. 903s. 904s. 905s. 906s. 907s. 908s. 909s. 910s. 911s. 912s. 913s. 914s. 915s. 916s. 917s. 918s. 919s. 920s. 921s. 922s. 923s. 924s. 925s. 926s. 927s. 928s. 929s. 930s. 931s. 932s. 933s. 934s. 935s. 936s. 937s. 938s. 939s. 940s. 941s. 942s. 943s. 944s. 945s. 946s. 947s. 948s. 949s. 950s. 951s. 952s. 953s. 954s. 955s. 956s. 957s. 958s. 959s. 960s. 961s. 962s. 963s. 964s. 965s. 966s. 967s. 968s. 969s. 970s. 971s. 972s. 973s. 974s. 975s. 976s. 977s. 978s. 979s. 980s. 981s. 982s. 983s. 984s. 985s. 986s. 987s. 988s. 989s. 990s. 991s. 992s. 993s. 994s. 995s. 996s. 997s. 998s. 999s. 1000s. 1001s. 1002s. 1003s. 1004s. 1005s. 1006s. 1007s. 1008s. 1009s. 1010s. 1011s. 1012s. 1013s. 1014s. 1015s. 1016s. 1017s. 1018s. 1019s. 1020s. 1021s. 1022s. 1023s. 1024s. 1025s. 1026s. 1027s. 1028s. 1029s. 1030s. 1031s. 1032s. 1033s. 1034s. 1035s. 1036s. 1037s. 1038s. 1039s. 1040s. 1041s. 1042s. 1043s. 1044s. 1045s. 1046s. 1047s. 1048s. 1049s. 1050s. 1051s. 1052s. 1053s. 1054s. 1055s. 1056s. 1057s. 1058s. 1059s. 1060s. 1061s. 1062s. 1063s. 1064s. 1065s. 1066s. 1067s. 1068s. 1069s. 1070s. 1071s. 1072s. 1073s. 1074s. 1075s. 1076s. 1077s. 1078s. 1079s. 1080s. 1081s. 1082s. 1083s. 1084s. 1085s. 1086s. 1087s. 1088s. 1089s. 1090s. 1091s. 1092s. 1093s. 1094s. 1095s. 1096s. 1097s. 1098s. 1099s. 1100s. 1101s. 1102s. 1103s. 1104s. 1105s. 1106s. 1107s. 1108s. 1109s. 1110s. 1111s. 1112s. 1113s. 1114s. 1115s. 1116s. 1117s. 1118s. 1119s. 1120s. 1121s. 1122s. 1123s. 1124s. 1125s. 1126s. 1127s. 1128s. 1129s. 1130s. 1131s. 1132s. 1133s. 1134s. 1135s. 1136s. 1137s. 1138s. 1139s. 1140s. 1141s. 1142s. 1143s. 1144s. 1145s. 1146s. 1147s. 1148s. 1149s. 1150s. 1151s. 1152s. 1153s. 1154s. 1155s. 1156s. 1157s. 1158s. 1159s. 1160s. 1161s. 1162s. 1163s. 1164s. 1165s. 1166s. 1167s. 1168s. 1169s. 1170s. 1171s. 1172s. 1173s. 1174s. 1175s. 1176s. 1177s. 1178s. 1179s. 1180s. 1181s. 1182s. 1183s. 1184s. 1185s. 1186s. 1187s. 1188s. 1189s. 1190s. 1191s. 1192s. 1193s. 1194s. 1195s. 1196s. 1197s. 1198s. 1199s. 1200s. 1201s. 1202s. 1203s. 1204s. 1205s. 1206s. 1207s. 1208s. 1209s. 1210s. 1211s. 1212s. 1213s. 1214s. 1215s. 1216s. 1217s. 1218s. 1219s. 1220s. 1221s. 1222s. 1223s. 1224s. 1225s. 1226s. 1227s. 1228s. 1229s. 1230s. 1231s. 1232s. 1233s. 1234s. 1235s. 1236s. 1237s. 1238s. 1239s. 1240s. 1241s. 1242s. 1243s. 1244s. 1245s. 1246s. 1247s. 1248s. 1249s. 1250s. 1251s. 1252s. 1253s. 1254s. 1255s. 1256s. 1257s. 1258s. 1259s. 1260s. 1261s. 1262s. 1263s. 1264s. 1265s. 1266s. 1267s. 1268s. 1269s. 1270s. 1271s. 1272s. 1273s. 1274s. 1275s. 1276s. 1277s. 1278s. 1279s. 1280s. 1281s. 1282s. 1283s. 1284s. 1285s. 1286s. 1287s. 1288s. 1289s. 1290s. 1291s. 1292s. 1293s. 1294s. 1295s. 1296s. 1297s. 1298s. 1299s. 1300s. 1301s. 1302s. 1303s. 1304s. 1305s. 1306s. 1307s. 1308s. 1309s. 1310s. 1311s. 1312s. 1313s. 1314s. 1315s. 1316s. 1317s. 1318s. 1319s. 1320s. 1321s. 1322s. 1323s. 1324s. 1325s. 1326s. 1327s. 1328s. 1329s. 1330s. 1331s. 1332s. 1333s. 1334s. 1335s. 1336s. 1337s. 1338s. 1339s. 1340s. 1341s. 1342s. 1343s. 1344s. 1345s. 1346s. 1347s. 1348s. 1349s. 1350s. 1351s. 1352s. 1353s. 1354s. 1355s. 1356s. 1357s. 1358s. 1359s. 1360s. 1361s. 1362s. 1363s. 1364s. 1365s. 1366s. 1367s. 1368s. 1369s. 1370s. 1371s. 1372s. 1373s. 1374s. 1375s. 1376s. 1377s. 1378s. 1379s. 1380s. 1381s. 1382s. 1383s. 1384s. 1385s. 1386s. 1387s. 1388s. 1389s. 1390s. 1391s. 1392s. 1393s. 1394s. 1395s. 1396s. 1397s. 1398s. 1399s. 1400s. 1401s. 1402s. 1403s. 1404s. 1405s. 1406s. 1407s. 1408s. 1409s. 1410s. 1411s. 1412s. 1413s. 1414s. 1415s. 1416s. 1417s. 1418s. 1419s. 1420s. 1421s. 1422s. 1423s. 1424s. 1425s. 1426s. 1427s. 1428s. 1429s. 1430s. 1431s. 1432s. 1433s. 1434s. 1435s. 1436s. 1437s. 1438s. 1439s. 1440s. 1441s. 1442s. 1443s. 1444s. 1445s. 1446s. 1447s. 1448s. 1449s. 1450s. 1451s. 1452s. 1453s. 1454s. 1455s. 1456s. 1457s. 1458s. 1459s. 1460s. 1461s. 1462s. 1463s. 1464s. 1465s. 1466s. 1467s. 1468s. 1469s. 1470s. 1471s. 1472s. 1473s. 1474s. 1475s. 1476s. 1477s. 1478s. 1479s. 1480s. 1481s. 1482s. 1483s. 1484s. 1485s. 1486s. 1487s. 1488s. 1489s. 1490s. 1491s. 1492s. 1493s. 1494s. 1495s. 1496s. 1497s. 1498s. 1499s. 1500s. 1501s. 1502s. 1503s. 1504s. 1505s. 1506s. 1507s. 1508s. 1509s. 1510s. 1511s. 1512s. 1513s. 1514s. 1515s. 1516s. 1517s. 1518s. 1519s. 1520s. 1521s. 1522s. 1523s. 1524s. 1525s. 1526s. 1527s. 1528s. 1529s. 1530s. 1531s. 1532s. 1533s. 1534s. 1535s. 1536s. 1537s. 1538s. 1539s. 1540s. 1541s. 1542s. 1543s. 1544s. 1545s. 1546s. 1547s. 1548s. 1549s. 1550s. 1551s. 1552s. 1553s. 1554s. 1555s. 1556s. 1557s. 1558s. 1559s. 1560s. 1561s. 1562s. 1563s. 1564s. 1565s. 1566s. 1567s. 1568s. 1569s. 1570s. 1571s. 1572s. 1573s. 1574s. 1575s. 1576s. 1577s. 1578s. 1579s. 1580s. 1581s. 1582s. 1583s. 1584s. 1585s. 1586s. 1587s. 1588s. 1589s. 1590s. 1591s. 1592s. 1593s. 1594s. 1595s. 1596s. 1597s. 1598s. 1599s. 1600s. 1601s. 1602s. 1603s. 1604s. 1605s. 1606s. 1607s. 1608s. 1609s. 1610s. 1611s. 1612s. 1613s. 1614s. 1615s. 1616s. 1617s. 1618s. 1619s. 1620s. 1621s. 1622s. 1623s. 1624s. 1625s. 1626s. 1627s. 1628s. 1629s. 1630s. 1631s. 1632s. 1633s. 1634s. 1635s. 1636s. 1637s. 1638s. 1639s. 1640s. 1641s. 1642s. 1643s. 1644s. 1645s. 1646s. 1647s. 1648s. 1649s. 1650s. 1651s. 1652s. 1653s. 1654s. 1655s. 1656s. 1657s. 1658s. 1659s. 1660s. 1661s. 1662s. 1663s. 1664s. 1665s. 1666s. 1667s. 1668s. 1669s. 1670s. 1671s. 1672s. 1673s. 1674s. 1675s. 1676s. 1677s. 1678s. 1679s. 1680s. 1681s. 1682s. 1683s. 1684s. 1685s. 1686s. 1687s. 1688s. 1689s. 1690s. 1691s. 1692s. 1693s. 1694s. 1695s. 1696s. 1697s. 1698s. 1699s. 1700s. 1701s. 1702s. 1703s. 1704s. 1705s. 1706s. 1707s. 1708s. 1709s. 1710s. 1711s. 1712s. 1713s. 1714s. 1715s. 1716s. 1717s. 1718s. 1719s. 1720s. 1721s. 1722s. 1723s. 1724s. 1725s. 1726s. 1727s. 1728s. 1729s. 1730s. 1731s. 1732s. 1733s. 1734s. 1735s. 1736s. 1737s. 1738s. 1739s. 1740s. 1741s. 1742s. 1743s. 1744s. 1745s. 1746s. 1747s. 1748s. 1749s. 1750s. 1751s. 1752s. 1753s. 1754s. 1755s. 1756s. 1757s. 1758s. 1759s. 1760s. 1761s. 1762s. 1763s. 1764s. 1765s. 1766s. 1767s. 1768s. 1769s. 1770s. 1771s. 1772s. 1773s. 1774s. 1775s. 1776s. 1777s. 1778s. 1779s. 1780s. 1781s. 1782s. 1783s. 1784s. 1785s. 1786s. 1787s. 1788s. 1789s. 1790s. 1791s. 1792s. 1793s. 1794s. 1795s. 1796s. 1797s. 1798s. 1799s. 1800s. 1801s. 1802s. 1803s. 1804s. 1805s. 1806s. 1807s. 1808s. 1809s. 1810s. 1811s. 1812s. 1813s. 1814s. 1815s. 1816s. 1817s. 1818s. 1819s.





dealing with a reversionary interest, if the plaintiff considers it to be for his benefit to press the matter, cannot stand.

## LAW OF LANDLORD AND TENANT.

### QUITTING FOR WANT OF REPAIR WITH- OUT NOTICE.

It is a trite maxim, but not the less true, that "hard cases make bad law," and it should strengthen the determination of the judges to act with regard to established principles, rather than upon the hardship of any particular case, when they reflect that a deviation from legal principle, however equitably it may operate as between individuals, works incalculable mischief to the community by misleading men in their mutual dealings, and suggesting erroneous views of their respective rights and remedies. The evil effect of such decisions is greatly aggravated, when they bear upon the ordinary transactions of mankind, and are founded upon a state of facts at once intelligible and familiar. Of this nature are many of the cases in reference to the relation between landlord and tenant, which, it is much to be regretted, have not always been decided upon general principles.

The apparently simple question, whether the neglect of a landlord, who is bound to repair, in not repairing premises held under a yearly tenancy, entitles the tenant to quit the premises without a regular notice, has been frequently the subject of judicial consideration, and modern authorities may be found directly in point and wholly irreconcilable.

The first of the modern cases is that of *Edwards v. Etherington*,<sup>a</sup> where the defendant, who held a house as tenant from year to year, quitted without notice, on the ground that the walls were in so dilapidated a state that it had become unsafe to reside in it, and the late Lord Tenterden (who presided at *nisi prius*) thought these facts furnished an answer to an action by the landlord for use and occupation. The learned Chief Justice, in summing up, told the jury, that although slight circumstances would not suffice, such serious reasons might exist as would justify a tenant's quitting at any time; and that it was for them to say whether in the case before them such serious reasons existed as would exempt the defendant from the

plaintiff's demand, on the ground of his having had no beneficial use and occupation of the premises. The jury finding found for the defendant, on a motion for a new trial, on the ground of misdirection, the Court of Queen's Bench refused to disturb the verdict. The next case, in point of time was that of *Gallie v. Murray*,<sup>b</sup> in which Bayley, B., held, that a tenant was justified in quitting without notice, premises which were anxious and unwholesome for want of proper sewerage. In *Gunn v. Goehrin*,<sup>c</sup> was an action for the use and occupation of apartments in a house belonging to the plaintiff. The defendant was under notice to quit at Michaelmas, but a few days before Michaelmas, a wall on the ground-floor gave way, and the kitchen was overflowed with filth. The tenant immediately began to look out for suitable apartments, but did not actually remove until six weeks after Michaelmas. He paid into court the rent due at Michaelmas, and the only question at the trial was, whether the landlord was entitled to recover the quarter's rent due at Michaelmas. Lord Denman, C.J., left it to the jury to say, whether the premises were unfit for proper and comfortable occupation, and whether the defendant had bona fide quitted the apartments as soon as he could procure others, and the jury having answered both these questions in favour of the defendant, the plaintiff was nonsuited, and the Court of Queen's Bench afterwards refused to grant a rule for a new trial on the ground of misdirection. In *Smith v. Marnable*,<sup>d</sup> which has subsequently been much discussed, the two cases, first cited were expressly relied upon by Parke, B., as authorities to warrant the position, that if the demised premises are incumbered with a nuisance of so serious a nature that no person can reasonably be expected to live in them, the tenant is at liberty to throw them up. The facts upon which *Smith v. Marnable* were decided were these:—The action was brought to recover the balance of five weeks' rent of a furnished house at Brighton, taken by the defendant under an agreement, whereby the plaintiff agreed to let and the defendant to take the house at the rent of eight guineas a week for five or six weeks, at the option of the defendant. The house was found to be infested with bugs, and after an occupation of one week, the de-

<sup>a</sup> Ryan & Mood, 268; 7 Dowd. & Ry. 117.

<sup>b</sup> 1 Mood. & Rob. 112. <sup>c</sup> 9 Car. & P. 378.

<sup>d</sup> 11 Mees. & W. 54.

tenant being paying a week's rent. Under these circumstances it was held to be an implied condition in the letting of the house, that it should be reasonably fit for habitation, and as the house in question was rendered unfit, because of its being infested with bugs, that the tenant was justified in quitting without notice.

Before the close of the year in which the Court of Exchequer decided the case of *Smith v. Marrable*, that court was called upon to reconsider the principle of that decision in a case of *Sutton v. Temple*.<sup>a</sup> In that case the defendant agreed in writing to take the estate of twenty-four acres of land for seven months, for 70*l*., and stocked the land with beasts, several of which died a few days afterwards from the effects of old refuse paint which had accidentally been spread over the land with the manure in the preceding spring. The defendant thereupon relinquished the possession of the land, which was not resumed, however, by the plaintiff, until after the expiration of seven months from the date of the agreement. The action was brought for the first instalment of the 70*l*., payable under the agreement, and defended on the ground, that the estate being wholly unfit for the purpose for which it was taken—the food of beasts, the defendant could not be said to have had any beneficial use or enjoyment of it. The court was clearly of opinion, that the demise of the land did not carry with it an implied condition that it was fit for the purpose for which the tenant took it, and that the plaintiff was entitled to recover. The great difficulty appeared to be, how to reconcile the judgment of the court in *Smith v. Marrable* with its decision in this case, and the late Lord Abinger ingeniously suggested that the cases were distinguishable, the contract in the one case being for land, and in the other for a house and furniture, which it was said was necessarily to be such as was fit for the purpose for which it was to be used. In *Sutton v. Temple*, however, Parke, B., plainly intimated that he entertained considerable doubt whether the cases referred to by him in giving his judgment in *Smith v. Marrable* could be upheld. The decision of the court in *Smith v. Marrable* was again directly questioned in another case argued in the Court of Exchequer, in the sittings after Hilary Term, 1844.<sup>b</sup> That was an action of debt

to recover a quarter's rent upon a demise of a house and garden. The defendant pleaded, that the house was demised for the purpose of his inhabiting it, that he could not reasonably inhabit it, because it was infested with bugs; that before the rent became due, he quitted possession, and never had any beneficial use or occupation of the house. The jury having found for the defendant on this plea, the point came before the court upon a motion for judgment *non obstante veredicto*, that the plea was no answer to the action. The case was fully and elaborately argued; the old authorities were referred to; and upon these it was expressly held, that there is no implied warranty on a lease of a house or of land, that it is, or shall be, reasonably fit for habitation or cultivation. As to the modern decisions on which the judgment of Parke, B., proceeded in *Smith v. Marrable*, the Barons now concurred in the opinion, that they were not law, and could not be supported, and Parke, B., added, that although *Smith v. Marrable* might perhaps be distinguished on the ground, that it was the case of a furnished house, it could not be supported on the ground on which he had rested his judgment.

All these cases were again discussed and considered by the Court of Common Pleas, in a case of *Surplice v. Farnsworth*, and another, which has been very recently reported.<sup>c</sup> In that case, the defendants entered into possession of certain malt offices, as yearly tenants to the plaintiff, at Michaelmas, 1838, and continued in possession until March, 1843, when they quitted the premises, on the ground that they were not in a fit state of repair, for the purposes of malting, a fact afterwards found by the jury. It also appeared, that during the existence of the tenancy, the defendants did some repairs to the premises, the cost of which was deducted from the rent, and it was thence sought to be inferred that the plaintiff was bound to repair. Under these circumstances, it was contended on behalf of the defendants, that the premises being shown to be in such a state as to render them unfit for the purposes for which they were taken, and the landlord being bound to repair them, the defendants had not such an use and occupation as would sustain the action.

The court, however, was clearly and unanimously of opinion, that the circumstance of a landlord being bound to repair

<sup>a</sup> 12 Mees. & W. 83.

<sup>b</sup> *Hart v. Windsor*, 12 Mees. & W. 68.

<sup>c</sup> 7 Man. & G. 576.





there shall be any special visitor or visitors of the charity the consent of such visitor or visitors, in writing under his, her, or their hand or hands, shall be necessary in order to such removal or appointment.

*Vesting of Estates in Trustees without Conveyance.*

15. That when and so often as any new trustee or trustees of any real or personal estate shall have been duly appointed as aforesaid under this act, then and in every such case, and by virtue of such nomination and appointment alone, and without any deed or instrument of conveyance, surrender, or assignment for that purpose whatsoever, all the lands, tenements and hereditaments, and all the personal estate, of or belonging to the charity, shall forthwith be and be deemed to be vested in such new trustee or trustees as aforesaid, either alone or jointly with the surviving, continuing, or other trustee or trustees (if any) of the same lands, tenements, and hereditaments, and personal estate, upon and for the same trusts, intents and objects of the said charity; and every order of the commissioners appointing trustees shall in terms direct the transfer by all proper officers or parties of any stock in the public funds, or of any stock or shares in the books of any public company, belonging to the charity.

16. Provided, that in case of lands, tenements or hereditaments of copyhold or customary or ancient demesne tenure, nothing hereinbefore contained shall be construed to dispense with the admittance thereto of the trustee or trustees, tenant or tenants for the time being of the same, or in anywise to affect the payment or satisfaction of all or any of the heriots, fines, fees, dues, or sums of money from time to time of right payable or accustomed upon the admittance or otherwise of any tenant or tenants of the honors or manors whereof such premises shall respectively be holden.

17. That whenever any new trustee or trustees shall have been appointed as aforesaid, an office copy of the order or orders making, confirming, or evidencing such appointment, under the seal of the commissioners, shall be received as sufficient evidence of such appointment in all courts, places, and proceedings whatsoever.

*Jurisdiction of Commissioners.*

18. That in every case within the summary jurisdiction of the commissioners, limited as aforesaid, it shall be lawful for the commissioners, upon proof to their satisfaction that any schoolmaster or schoolmistress or other officer of any charity has been negligent in performing his or her duties, or that he or she is unfit or incompetent to discharge them properly, either from immoral conduct, age, or any other cause whatsoever, to empower the trustees of such charity to remove such schoolmaster or mistress or other officer under such conditions as to the commissioners shall appear proper: Provided always, that where there shall be any special visitor or visitors of the charity the consent of such visitor or visitors, in writing under

his, her, or their hand or hands, shall be necessary in order to such removal.

19. That in every case within the summary jurisdiction of the commissioners, limited as aforesaid, in which it shall appear to the commissioners that property given on or subject to any charitable trust cannot be applied to the purposes directed by and according to the intention of the donor thereof, it shall be lawful for the commissioners, upon the application of the trustees or the major part of them, and with the consent of the visitor or visitors, in cases where there is a special visitor or visitors of the charity, to be signified in writing under his, her, or their hand or hands, by order under their seal to settle or approve a scheme for the application of such property to any charitable purposes, as the commissioners shall think fit: Provided always, that in the case of any charity for the purpose of education in connexion with the United Church of England and Ireland, if there be not any special visitor, the consent of the bishop of the diocese shall be required in order to the validity of such new scheme, in like manner as though he were a special visitor appointed in the instrument of foundation.

20. That so often as it shall appear to the commissioners that any claim or demand, or cause of suit, against any person or corporation, in respect of any neglect, abuse, or breach of trust in the administration, or management of any charity or charitable estate or funds, or in relation to any property subject or alleged to be subject to any charitable trust, may be compromised or adjusted without any proceedings or the continuation of any proceedings at law or in equity, with advantage to the charity interested therein, or ought, under the special circumstances of the case, to be compromised or adjusted without any such proceeding or the continuation of any such proceeding, it shall and may be lawful to or for the commissioners to authorize any trustees or others acting on behalf of the charity concerned therein to compromise and adjust such claim, demand, or cause of suit, upon such terms and conditions as the commissioners shall think fit, so as the terms and conditions of every such compromise be set forth in an agreement in writing under the seal of the commissioners, and under the hand of the person or persons or under the seal of the corporation against whom such claim, demand, or cause of suit may have existed; and upon the due performance of the terms and conditions of such compromise by such person or persons or corporation as aforesaid such agreement shall be a final bar to all actions, suits, claims, and demands, by or on behalf of the charity concerned therein, in respect of the cause of action, suit, or matter in respect of which such compromise shall have been made.

21. That the commissioners shall from time to time make such regulations as they think fit concerning the form and manner of the accounts to be kept and rendered, and the returns to be made under this act by persons intrusted with the receipt or application of the revenues of any charitable trust, and for the transmission and

production of such accounts, and the vouchers thereof, to the commissioners or inspectors, and may from time to time rescind or alter such regulations: Provided always, that, before any such regulation shall be obligatory on the persons concerned in the administration of any charitable trust, a written or printed copy of such regulations shall be sent by the commissioners by the post or otherwise, to such persons, or to the clerk (if any) of such charitable trust.

*Receipt and application of Revenues.*

22. That the said commissioners, or any one or more of them, may, and each of the said inspectors, shall, from time to time, when authorised so to do by any order of the said commissioners under their seal, make inquiry into the receipt and application of the revenues of any charitable trust in England and Wales, and, in cases within the summary jurisdiction of the said commissioners, make inquiry, inspection, and examination into the administration of such charitable trusts; and the said inspectors shall respectively make such inquiry, inspection, and examination in such districts as may from time to time be assigned to them by the commissioners, and shall obey the directions of the commissioners as to the times and manner of such inquiry, inspection, and examination, and all other directions of the commissioners not inconsistent with the provisions of this act, and shall report their opinion, and the grounds thereof, upon any inquiries made by them, to the commissioners.

23. That it shall be lawful for the commissioners, or any one or more of them, or for any inspector under this act, when authorised as aforesaid, to call for and inspect all books of account, vouchers, and other documents concerning such revenues, and the receipt and application thereof, and to require the attendance of any person acting as trustee, master, officer, or servant of any such charity, or as manager or receiver of any estates or revenues subject to any charitable trust, or concerned in the administration thereof, or receiving any salary, emolument, or benefit from any charitable trust, and to require from any such person answers, orally or in writing, to any questions in relation to the estates and revenues of such charitable foundations and trusts, and the application thereof, and generally all such information, so far as may consist with the knowledge of such person, in relation thereto, as such commissioner, or inspector may think fit to require.

24. Examinations and papers to be transmitted to office of commissioners.

25. Commissioners empowered to examine upon oath. The like power may be delegated to an inspector.

26. Penalties of perjury for false swearing.

27. Trustees, with the approbation of the commissioners, may transfer stock into name of the Accountant-General, or pay charity money into the bank, in his name in the matter of the charity.

28. Such stock and cash to be kept apart from stock and cash subject to orders of court.

29. Indemnity to trustees making such transfer or payment.

30. Where charity funds are insecure, commissioners may order transfer or payment to the account of the Accountant-General.

31. Commissioners to make orders as to the payment of the dividends.

32. No payment to be made by the bank, except upon authority by two commissioners.

33. Stock transferred to the Accountant-General under any order of the commissioners may be sold under an order signed by two commissioners.

34. When stock sold by the Accountant-General under an order of two commissioners, their treasurers to certify which stock is to be sold, &c.

35. Certificate of secretary to the commissioners to be sufficient authority for transfer of stock.

36. After death of the Accountant-General the securities to vest in his successor.

37. Lord Chancellor to regulate mode of keeping accounts.

38. Accountant-General not to interfere with charity monies, but only to keep the account at the bank.

39. Powers of attorney for receipt of money exempt from stamp duty.

40. Persons refusing to appear or be examined liable to be fined by the Court of Queen's Bench or Exchequer.

41. Officers of charities who obstruct commissioners or inspectors, subject to removal.

42. Trustees disobeying the act to be subject to removal.

43. That in every case in which any person shall refuse, or for the space of one calendar month neglect to obey, or perform any order of the commissioners made under the authority of this act, it shall be lawful for the High Court of Chancery, upon the petition of the commissioners, or of any person or persons interested in such order, to order and direct that such order of the commissioners be obeyed and enforced in such and the same manner as if such order of the commissioners had been an original order of the Court of Chancery, and that all the costs of such petition be paid by the person so refusing or neglecting as aforesaid.

44. Legal estate of hereditaments now vested in municipal corporations on charitable trusts to be vested in the trustees.

*Appointment of New Trustees.*

The bill then recites, that it has happened, by reason of the property held by municipal corporations in trust for charitable purposes being in some cases of small amount, that no application has been made to the Lord Chancellor to appoint trustees under the provisions of the said act; it is therefore proposed to enact;

45. That if a special application shall be made to the commissioners by petition or memorial in writing, signed by not less than ten inhabitant



to householders of the borough place in which any charitable estate or fund within the patronage of the act shall be situated, or ought to be applied, such petition of memorial setting forth the fact, that no trustees have been appointed under the said act, and also the nature, situation, and value, either actual or supposed, of the charitable estate or fund, and praying for the appointment of trustees thereof, it shall be lawful for the commissioners, after hearing such persons, and calling for such information as to them shall seem proper, by order under their seal to appoint such number of trustees as they shall think fit, (regard being had to the nature and amount of the estate or fund) subject to the charitable trust; and it shall be lawful for the commissioners, by order under the same seal, from time to time to call upon such of which may stand among the trustees, so to be appointed, to add to the number of the trustees, if the number of the charity shall appear to them to require such addition or enlargement, and

April Order of the commissioners to settle the estate in the trustees without conveyance, and to be sufficient evidence of the appointment.

147. Commissioners may, on special applica-  
tion, add to the existing number of standing  
tribes, where necessary to secure the fair ad-  
ministration of the law.

to make a declaration before voting

**49. Orders of the commissioners appointing trustees of municipal charities to be subject to appeal to the Lord Chancellor.**

### Rehearsing.

50. That in every case of an order made by the commissioners, or of any proceeding by any commissioner, it shall be lawful for the commissioners, if they shall so think fit, upon the application of any person who shall think himself aggrieved by any such order or proceeding within two calendar months after such order shall have been made or proceeding had, to reconsider such order or proceeding, or to rehear the matter of the petition or report on which such order or proceeding shall have been made, and to confirm, vary, or rescind such order or proceeding as the commissioners shall think fit; and every such rehearing shall take place before all the commissioners.

### Appointment of Clerks

51. That all trustees in whom property shall be vested upon any charitable trust, or who shall act in the administration of any charitable property or revenues, shall, if required by any order of the commissioners, from time to time appoint a fit person to be the clerk of such charitable trust, for the purposes of all returns by this act directed to be made, and of all communications with the board, and every such clerk shall on his appointment communicate his name and address to the secretary of charities to be appointed under this act.

52. Accounts of charity receipts and expenditure to be kept and audited annually. Statement of debts, receipts, and expenditure to be transmitted annually to the commissioners.

54. - The Commission is to report to the Govn.  
55. - The County Administration fund will  
56. - However the County is to transfer to ad-  
vance expenses of commissioners in case of any  
deficit.

49595 BAK 495954 AKF01 2153998

155. The latest copies of abstracts of  
 conveyances and mortgages being deposited  
 after the first day of August above, which  
 any property, subject to any charitable trust,  
 shall be affected by law, in equity, or in such  
 thereof as relates to such property so affected,  
 shall be transmitted to and deposited in the  
 office of the Commissioner, in such manner as  
 the Commissioner shall by proper official in-  
 structions shall direct, and may be retained to  
 serve for the purposes aforesaid as regards such  
 abstracts or copies of conveyances, mortgages,  
 conveyances, and assignments, with all in-  
 struments of title concerning any charity, charity  
 or school, in the county of any, and also thereof or  
 so much thereof as relate to such charity, pro-  
 perty or trust, to be transmitted for registration  
 and deposit in the office of the Commissioner,  
 the Commissioner may, at his discretion, order  
 under their seal, direct and return, conveyances  
 and assignments of the aforesaid goods, thereof,  
 so deposited; and such abstracts or extracts as  
 aforesaid shall be open to the inspection of any  
 person interested therein, or payment of the  
 sum of two and a half cents shall be delivered  
 to any such person, applying and obtaining  
 payment for each such copy after the month of  
 for every 72 words.

57. That the trustees of persons having the title deeds and instruments relating to the property or funds of any charity shall be subject to the regulations of the commissioners, provide for the safe custody thereof in such repositories secure from damage by fire or otherwise, and in case of any small deposit means for so securing the same shall be sent the same to the commissioners, for safe custody in the office of the commissioners, retaining copies thereof for use and reference.

58. Indemnity to trustees for acts done under direction of commission

60. Exception of pleading interest in and

capable of taking effect as a bargain and had it failed of its proper effect and was then a

## NOTICES OF NEW BOOKS.

## NOTICES OF NEW BOOKS

*Concise Precedents in Conveyancing*, adapted to the Act for converting Real property into Personal Estate, with Practical Notes and Observations on the Act, and on the other parts of the Statute Attendant Thereon; by Charles Dwyer, Solicitor of the Middle Temple, and Barrister at Law. Late Fellow of Christ's College, Cambridge. Second Edition. London: Maxwell & Son; 1845. Pp. 622.

Mr. Dymally, in his introduction to this volume states his object to be that of submitting to the profession some precedents of assurances of more concise form and language than those in ordinary use. He appears to have been induced to undertake this task in consequence of the Act "to Simplify the transfer of Property," which was afterwards repealed and a new act substituted viz. the 8 & 9 Vict. c. 106 to amend the Law of Real Property.

We cannot concur in the expediency of these short forms. Mr. Davidson himself, with respect to Lord Brougham's General Pleading and Pleading Bills (8 & 9 Vict. c. 119, 124) says, "it is doubtful whether the short forms which have lately been framed can by any degree of skill be made so valuable for practical purposes as any important extent of opinion from a man decidedly well-disposed to curtail the old forms is important to those who form a libe of advocacy who incline to hazard the experiment of the act of parliament form."

It is due to Mr. Davidson, who has been called to attend to his duties as a member of the Council, to state his views on this subject, as a departure from the old forms. The following are the principal points in which his collection differs from the late established ones.

[illegible]

"The statement of instrumental consideration has also been sustained, and it was originally introduced to transfer a conveyance of real estate capable of taking effect as a bargain and sale, if it failed of its proper effect, and was then absurdly applied to every species of assurance of every kind of property. It never was of the slightest use except in a bargain and sale inrolled, and in the creation of a term by the owner of a freehold estate, since in no other case could it be made to operate as a bargain and sale for want of inrollment; and it could have no operation in any other case, and have frustrated the intention by vesting the legal estate in the bargainee, and converting the uses into trusts. The nominal consideration has been of late generally disused, and was, no doubt, become universally discarded."

"The real consideration is described simply as 'all without the addition of its

being ill-suited models of the White Kingdome or the like, and have had to state that "The operative words used in the present case subject it to the consideration of giving effect to the past tenor alone from the ancient mode of conveyance by literary instruments with a subsequent change of sentiment to produce evidence of the diversity." The charter witnessed that the labour lands were either given, or granted; and generally added, "and by those presents hath confirmed;" (*Went's Synodography*, edn. 1685, sect. 288 et seq. § 2, Blyth Comm., Appx No. 3.), which was in the end unavailing to secure, as the modern form does which the conveyance is: by the deed itself, the insertion of the words in the past tense is never done so; and his old estate need not be disposed of with no! The word release has not been retained as the general operative word of conveyance of freeholds; because its use arose from the lease and release being the ordinary mode of conveyance; and is no longer applicable, now that the reference to the lease for a year and to the tenant dispensing with it are taken away with it. The operative word ordinarily used throughout the book for the conveyance of freeholds is 'grant,' with the addition of 'confirm' and 'release,' when really appropriate. Grant is used as being not only the verb of most ancient use in English law records, and in statutory expression, and appropriately retained in being the most exactly suitable and appropriate word under the new act (§ 29) in the deeds real and personal the word assign is the only operative word employed, except when circumstances render 'confirm' or 'release' appropriate. In appointments, of course, such operative words are used as the powers require; and for married women, the statutory expression "I give and I will," &c. 74 s. 37, "dispose of" is coupled with 'grant,' or any other which appears appropriate to the case.

"The parcels in the precedents are uniformly described by reference to a schedule and map, that being the clearest as well as the shortest mode of description, and one which the parol maps and schedules made for the redemption of tithes have rendered the most common and very easily attainable. In those cases, however, in which this mode of description is not attainable, the parcels can be introduced into the body of the deed in the old form, without any other alteration than omitting the reference in the precedent to the map and schedule.

"The general words have been very greatly abridged by omitting for the most part the enumeration of particulars. It is much to be desired that the legislature may enable convey-

The old but unfounded notion of grant implying a warranty or covenant (3 Martin's Conveyancing, 40; *Hinde v. Gray*, 1 M. & G. 195.) and being, therefore, an improper word for trustees, mortgagees, or the like to convey by, is, of course, at an end. (See the new act, sect. 1.)



ancers to dispense with them altogether, by enacting, in the language of the general words themselves, that all the things they specify, and all other rights, easements, and appurtenances, whether strictly appurtenant, or appurtenant only by reputation or enjoyment, shall pass by the conveyance of the property itself. At present, indeed, there is no question but that what is strictly appurtenant in law will so pass; but there are so many rights and easements which are not strictly appurtenant in law, but are only appurtenant by reputation and enjoyment, that the general words in a modified shape must be retained."

On this point Mr. Davidson observes, that in one of the acts introduced by Lord Brougham, 8 & 9 Vict. c. 119, there is a clause (s. 2) intended to supersede general words in conveyances under that act; but the provision does not very satisfactorily meet the real defect as to things reputed to be but actually appurtenant, and being confined to conveyances in pursuance of that act, will not be of any general use. Mr. Davidson then proceeds—

"The clause called the 'all the estate' clause has been retained, (although in a very abridged shape,) to meet those cases in which the conveying party has a term of years, or some other interest in the property distinct from his estate which appears in the deed, and which might be held not to pass except by virtue of this clause. In ordinary cases, however, the clause may be wholly omitted. The clause called 'and the reversion, &c.,' has been dispensed with: it was wholly useless, and has of late been much disused in practice. The only words used in the habendum are 'to hold,' and in mortgages the old form, 'subject to the proviso for redemption hereinafter contained,' is omitted. The expression 'hereinbefore granted [or 'assigned' or 'demised,'] or expressed and intended so to be,' is omitted, except where the omission might occasion ambiguity. The expression in question should only be used where it is necessary to distinguish the property conveyed, &c., from some other property; and even then the words 'or expressed and intended so to be' may, for the most part, be safely omitted.

"In limiting powers no restriction has been imposed on their exercise, except that it shall be by deed. The ordinary restriction, that it shall be by deed, 'sealed and delivered in the presence of, and attested by, two or more, credible witnesses,' is troublesome and useless, and sometimes renders nugatory the intended execution of a power by an omission to comply with an unmeaning form. The restriction to the exercise by deed is proper to preclude the power from being exercised by a mere letter or note in writing, penned without due consideration, and without that general form which law considers necessary for the conveyance of estates.

"In framing covenants, the word 'covenant' only is used; and the covenants for title have, generally speaking, been reduced to covenants for right to convey free from incumbrances, and for further assurance, and have been most materially shortened.

"The power to appoint new trustees and the other powers have also been very much shortened, without, it is believed, impairing their efficiency; and, generally speaking, redundancies of expression have been cut off."

The work contains Mr. Bellenden Ker's letter to the Lord Chancellor, in which he states the reasons for the repeal of the late, and the provisions of the new act, and this is followed by Mr. Davidson's observations on the 8 & 9 Vict. c. 106 & 112, the Acts for amending the Law of Real Property, and rendering the assignment of satisfied terms unnecessary; with the clauses formerly proposed to be inserted in the Bill to Simplify the Transfer of Property.

Within the small compass of this work, Mr. Davidson has given various precedents of the simple kind of assurances, which appear to us to be well selected for the purpose, and admitting of application to many other cases where it is determined to adopt the principle of brevity. It is necessary to observe, however, that in adopting the forms given by the Conveyance and Lease Acts, the practitioner will be supported, where the forms properly apply, by the provisions of the statute; whilst in using Mr. Davidson's forms in lieu of the old precedents, he must depend on that gentleman's authority, or on his own learning and judgment. Cautious persons will probably adhere to the ancient course of conveyancing practice.

## PETITION AGAINST THE GENERAL REGISTRY OF DEEDS.

"We had intended to submit to our readers the form of a petition embodying the main objections to a general registry of deeds, but having received the copy of a petition to the House of Lords from landowners and inhabitants of Somerset, we give this the preference, especially as it is accompanied with notes referring to the Bill for Establishing a General Register of Deeds and Instruments affecting Real Property, brought in by Lord Campbell on the 26th January last."

The petition states—  
"That the petitioners are of opinion that a

general public registry of deeds, whether to be effected by deposit of the original, or of a duplicate, copy, or memorial, is uncalled for by any adequate occasion of necessity or usefulness, either to the landowner on public at large; and would be productive of consequences highly mischievous to both; for whilst on the one hand all transactions relative to the conveyance of lands, whether by sale, mortgage, marriage settlement, or otherwise, would invariably be attended with delay, exposure, and additional expense, with risk of the loss of deeds by

their transmission to and from the place of registry, and with great danger to titles from the omissions which would often occur under the new system; on the other hand, the evils to be guarded against have been greatly overrated, both as to frequency and magnitude, and in fact are of extremely rare occurrence.

"That the proposed law would operate most injuriously towards persons wanting to raise money on sudden emergencies, when the necessary and unavoidable delay under the new system would often frustrate the object of the party, and expose him to serious consequences."

"That the evils of the registry with regard to small transactions would be most grievous, and would in numerous cases amount to a prohibition; and it has been ascertained that more than half of all the sales and mortgages that take place are for sums at and under 300l."

"That the petitioners are convinced that ordinary skill and care, even under the present system are sufficient to afford, in transactions respecting real property, a rational assurance of safety."

"That the well-grounded confidence which arises, especially in the country, from local information, and from the known integrity of parties and their solicitors, renders unnecessary in many cases the troublesome and expensive precautions which the wary conveyancer at a distance, feeling alive to the possibility of fraud, and ignorant of all extrinsic circumstances affecting the property and its title, deems it his duty to advise."

"That the subject of the establishment of a General Metropolitan Registry of Deeds affecting Real Property, occupied the attention of the

deeds would attach, whether originals or only copies were to be deposited, because the originals would at all events require to be sent to the office, in order to have the stamp and certificate of registry affixed.

"It has been calculated by persons of experience that no actual loss occurs in one case of a thousand to which the register would apply a remedy."

"This evil would exist although the party should retain possession of his deeds. A lender would not be safe in advancing his money on the deposit of them without previously searching the office for prior incumbrances, nor without afterwards registering a memorandum of the transaction. The delay in the first place (to say nothing of the expense, for the memorandum would not be received without an *ad valorem* mortgage stamp) and the exposure afterwards, would completely frustrate the accommodation of the temporary loan. There is a clause in the bill (s. 15) recognising equitable mortgages by deposit of deeds, which is an incongruity, since by a previous clause (s. 10) the surrender to the office of all deeds executed subsequently to the 31st of December 1845, is required; so that the time would come when the landowner would have no deeds to deposit."

"With regard to exposure the danger would be equally great, either from the original or the copy. It may here be observed, that some attempt is made in the present bill (s. 62) to prevent importunate searches, by requiring a declaration to be signed by the person applying for copies or extracts, stating, amongst other things, that he has, or claims, some beneficial estate or interest in the lands in question, which if untrue subjects the party to a penalty. But this provision is inefficient for the purpose, for how is the negative to be proved, viz. that the party applying does not claim some estate or interest in the land? Besides this, there is no attempt to restrain the examination of the indexes. Query, how will noblemen and gentlemen of large landed property like to be deprived of one of the common rights of an Englishman, the custody of their own muniments of title? or to have their marriage settlements, family arrangements, mortgages, (if any,) and private affairs laid open to the inspection of every litigious or importunate inquirer?"

"There can be no doubt but that the cost of registration will add greatly to the expense of conveyancing. To say nothing of other items, the mere article of search for incumbrances, which will always be necessary, and particularly when the mass of deeds shall be considerably accumulated, may be very great. The real property commissioners, in their second report, acknowledge that in other registries 'where the title is extensive and complicated, the labour and expenses of a search become enormous. In the index for Middlesex in one year, the names under one letter of the alphabet have filled nearly 50 pages, containing about 39 names each. We have been told that a search is rarely made at the present offices, except from the time of the last purchase or mortgage; that such a limited and inadequate search has, for one title, occupied a solicitor or his clerk more than ten days; that one search has cost upwards of 200l.; and that in some cases where the estate has belonged to persons of very common names, the search has been considered to be impracticable.' statements, sufficiently appalling, to arouse the great body of landed proprietors to a timely consideration of their interests, and corroborative of the danger and insecurity to be apprehended from the adoption of a measure so deeply affecting the property and the rights of the present and future generations, as that of a general register."

"The risk attending the transmission of





obtains an additional debtor, whose ability to pay may be much better than that of the original debtor in the bill.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

### FURTHER LEAVE TO AMEND BILL. — NEW ORDERS.

*The court will allow a bill to be amended within a limited period after the time for amending has expired, on payment of costs, and satisfactorily accounting for the delay.*

In this case, (reported *ante*, p. 199,) the Vice-Chancellor of England had refused a motion by the plaintiff for leave to amend his bill, after the expiration of the time allowed for putting in amendments.

Mr. Roll. This is an application to discharge his Honour's order, and to permit the plaintiff to amend within three weeks from the present time. The facts are shortly these:—The defendant put in his answer on the 29th of November, 1844, an office copy of which was sent to plaintiff's counsel on the 14th of January, 1845, and amendments were filed on the 21st of March, two days after the time allowed to amend had expired. Notice of motion for leave to amend was originally given for the 15th of April, 1845, and the motion was partly heard on the 3rd of July, and was ultimately disposed of on the 15th of December. The point respecting the application in the first instance to the Master need not be raised, as it is now settled by the case of *Christ's Hospital v. Granger*, (*ante*, p. 317). [Lord Chancellor. That case decided that the restriction upon the time of applying to the Master was taken away by the new orders, and therefore, the grounds of Lord Cottenham's decision, in *Lloyd v. Wait*, were obviated.] The plaintiff rests his present motion on two grounds, first, that due diligence by the solicitor has been shown, (the defendant waving the point of delay on the part of counsel); and secondly, that the new orders do not apply. The time which the Vice-Chancellor thought was not sufficiently accounted for, was the period of 46 days from the 29th of November, 1844, until the 14th of January, 1845, during which time, the defendant urged, that the country solicitor had detained the papers before he sent them to counsel to draw the amendments. The affidavit of the London agent now showed that he did not obtain the office copy of the answer until the 12th December, 1844. [Lord Chancellor.—Why take an office copy?] Roll.—By an order of the Master of the Rolls no brief copy is allowed. Plaintiff must take an office copy, and must also wait his turn. There are no modes of expediting the public officers. The agent swears that all possible diligence had been

used, and his clerk supposed that no time had been lost. The affidavit of the agent, though not exactly tallying with the requisitions of the 68th Order of May, 1833, comprehended nearly the whole of them. Mr. Roll then proceeded to justify his own delay, and handed to his lordship a copy of the bill and amendments. With respect to the second point, Mr. Roll contended that the new orders would not be held to operate retrospectively to the disadvantage of a party in respect of proceedings taken under the old practice.

Mr. Walker and Mr. Bates opposed the application, and argued, that the plaintiff had not made out a case for indulgence. The orders are not to be relaxed merely in favour of the plaintiff, but the defendant is also entitled to the protection of them, and the court must be satisfied that due diligence had been shown. [Lord Chancellor. The orders merely require that there be no vexatious delay. If the parties act *bona fide*, but a little negligently, it is a matter for the discretion of the court.] In the next place, it was not sufficient for the plaintiff merely to state his belief that the proposed amendments were material, but he must satisfy the court of such materiality by an affidavit to the effect that such are not intended for the purpose of vexation or delay, but because the same are considered to be material to his case. (68th New Order.) The plaintiff had not done so in the present instance, and therefore would not be assisted. It was not clear that the plaintiff intended to put in any amendments; he might be seeking for delay in order to enable him to dismiss his present bill and file another, based upon the additional information extracted from the defendant's answer.

Mr. Roll replied, that he was proceeding under the old practice, and that by the 13th Order of April 1823, as amended in November 1831, the present affidavit would be sufficient. His lordship had the amendments before him, and would judge of their materiality.

The Lord Chancellor having remarked, that from a perusal of the bill, answer, and amendments, the latter appeared to be necessary, recapitulated briefly the stages of the proceedings in this case. The Vice-Chancellor gave judgment upon the hearing, after the new orders had come into operation, but the cause might have been previously heard if not prevented by the pressure of business in that court, and in fact had been partly so heard. Therefore the court was in possession of the cause before the new orders could affect it, and thus the present application became a matter for the discretion of the court, under the guidance and restrictions, nevertheless, of those new orders. Counsel had duly accounted for the delay after the papers had come into his hands, and it must be borne in mind, that amending a bill was not merely mechanical. The period which chiefly required explanation was, the delay of the town agent in obtaining an office copy. The affidavit of the latter did not state that he had applied at the office between the 20th of Nov. and the 12th December, 1844, but as the de-

defendant would not be prejudiced by an extension of the time for the plaintiff to amend, the indulgence required might be granted. As to the suggestion that the plaintiff might file a new bill, it must be remembered that he could only do so at the expense of the costs. His lordship remarked that this case came before him on additional affidavits, and was, therefore, in fact, a re-hearing of the cause, decided by his Honor. The defendant had a right to be present to watch the application, and consequently the plaintiff must pay the costs of such appearance. Amendments, (which it was stated, were quite ready) to be filed within a fortnight.

*Winnall v. Featherstonhaugh.* March 11th, 12th, and 13th, 1846.

### Rolls Court.

#### COSTS.—12TH ORDER OF 1841.

*This order does not apply to the common order for enforcing payment of a bill of costs on taxation.*

In this case *Mr. Elderton* applied for the opinion of the court upon the 12th Order of August, 1841, which directs that upon every order or decree requiring a party to do any act thereby ordered, "there shall be endorsed a memorandum, in this words, or to the effect following, viz. 'If you the within named A. B. neglect to perform this order by the time limited, you will be liable to be arrested by the sergeant at arms attending the High Court of Chancery; and also be liable to have your estate sequestered for the purpose of compelling you to obey this order.'" The doubt was, whether this order applied to a common fourth order for the payment of the sum found due on taxation of a solicitor's bill, which upon the face of it expresses, that if not obeyed, the party will be committed to prison.

Lord Langdale expressed his opinion that that the 12th Order did not extend to such a case. The order in question was not made in the cause; while the 12th Order seemed by the use of the word "party" to contemplate such orders only as were so made. And the indorsement, if made, would give false information as to what was intended to be done.

*Re Blake.* March 11th, 1846.

#### DECREE.—CREDITOR'S SUIT.

*After a decree for an account in a creditor's suit, there is no other way of getting rid of it but by bringing on the suit for further directions.*

There was a motion in a creditor's suit, after decree to account, that the proceedings might be stayed, upon the ground that there were no assets, except the assets real, which were not applicable in payment of the simple contract debts. The bill was filed in 1832, and had now been revived for the purpose, if possible, of getting rid of the decree. Advertisements had been published under the decree; but no credi-

tor had come in, except the plaintiff; and the proceedings had been slumbering for several years.

*Mr. Moore*, for the motion, said that all parties were desirous of having the bill dismissed, if possible, but this he apprehended could not be done after a decree.

Lord Langdale said, certainly the bill could not be dismissed, and to stay the proceedings could give the plaintiff, or any persons liable to be affected by the proceedings, no security. The only course was for the plaintiff to bring the cause on for further directions, when, as no other creditor had come in, she might do what she liked with it.

*York v. White.* March 11, 1846.

### Vice-Chancellor of England.

#### SECURITY FOR COSTS.

*Where the plaintiff in a suit has no permanent residence, he may be called upon to give security for costs, although his address as stated in the bill was accurate at the time of the bill being filed.*

THIS was a motion on the part of the defendant that the plaintiff might be ordered to give security for costs, and was made under the following circumstances:—The plaintiff at the time of filing the bill was in lodgings at a house in Bury Street, St. James's, and in the bill was described as of Bury Street, St. James's. A day or two after the bill was filed he went to Paris, but stayed there only a short time, when he returned to England, and by the advice of his solicitor went to reside in the neighbourhood of Bath, where he had continued to reside ever since. In December, 1844, he executed a mortgage for the benefit of his creditors, and in that deed he was described as of Carlisle.

*Mr. Stuart*, and *Mr. Stratton*, for the motion, contended that as the plaintiff had no fixed or permanent residence, the case was within the rule laid down in *Calvert v. Day*, 2 Yo. & Col. 217, in which it was held that a plaintiff who was a mere hawker and pedlar and had no fixed place of residence, must give security for costs. They cited also *Weeks v. Cole*, 14 Ves. 518; *Sandys v. Long*, 2 Myl. & K. 487; and *Mitf. on Pl.* 43.

*Mr. Bethell*, contra, said there were no grounds for the motion. It was not pretended that the plaintiff did not reside at the address described in the bill when the bill was filed. Then, with regard to his going to Paris, he was there only for two days, after which, by the advice of his solicitor, he went to reside in the neighbourhood of Bath, near to the residence of his father and mother. There was no pretence, therefore, for the allegation, that he was constantly shifting his residence; and no application had been made to his solicitor to be furnished with his present abode.

The Vice-Chancellor said, the question was whether there was not sufficient evidence to show the plaintiff's residence to be of such a transitory nature as to render security for costs





[illegible]



the party acted as an attorney in the transaction; *In re Gee*, 3 Dowl. & L. 997. Now it stands uncontradicted, that the attorney in this case prepared the promissory note, and gave the undertaking in pursuance of terms which had been proposed by him for settling the action. I think that all this must be taken to have been done whilst acting in the capacity of attorney in the transaction, and consequently the rule must be made absolute.

Rule absolute.

*In re Fairthorne.* Hilary Term, 1846.

### Exchequer.

#### SHERIFF.—BAIL.—ATTACHMENT.

*An attachment against a sheriff for not bringing in the body, was ordered to be set aside, on payment of costs and perfecting special bail. Those terms not having been complied with, a habeas issued to bring up the body of the sheriff. Whereupon the sheriff paid to the plaintiff the penalty in the bail bond (being double the amount indorsed on the writ) and costs. Held, that the plaintiff was not entitled to retain more than the amount indorsed on the writ and costs, and that he was bound to refund the surplus.*

AN action was commenced to recover the sum of 61*l.* 1*s.*, and a writ of *capias* issued against the defendant, directed to the sheriff of Middlesex, and indorsed to hold to bail for 61*l.* 1*s.*, besides costs, &c. The sheriff was ruled to bring in the body, but having omitted to do so, an attachment issued against him, which was ordered to be set aside, on payment of costs and perfecting special bail. The sheriff not having complied with these terms, a writ of *habeas corpus* issued, directed to the coroner, and requiring him to bring up the body of the sheriff. It was arranged that the *habeas* should not be executed, the sheriff paying to the plaintiff the penalty in the bail bond, without prejudice to any application to be made by him to the court. The under-sheriff accordingly paid to the plaintiff's attorney the sum of 122*l.* 2*s.*, being the amount of the penalty in the bail bond, together with costs. A rule was then obtained calling on the plaintiff to show cause why he should not repay to the sheriff the amount paid by him, after deducting the debt sought to be recovered, and costs.

Montague Chambers showed cause.—The plaintiff is entitled to retain the sum paid. In Archbold's Practice, p. 572, it is said—"If the attachment be not set aside, the sheriff can be discharged from it only by payment of the whole debt and costs in the original action to the extent of the penalty of the bail bond, (and not merely the sum sworn to and costs,) and also the costs of the attachment." Besides, the sheriff having paid the money with full knowledge of all the facts, cannot now recover it back.

Jervis appeared to support the rule, but was not called upon.

Pollock, C. B. The rule must be absolute. The plaintiff is only entitled to retain the amount indorsed on the writ of *capias* together with costs. There is no foundation for retaining the surplus as a penalty for the sheriff's misconduct. The plaintiff has a right to be placed in the same situation as if special bail had been put in and perfected in due time, and the sheriff does that by paying the sum indorsed on the writ and costs.

Parke, B. I am of the same opinion. The sheriff is bound to put the plaintiff in the same situation as if he had done his duty in the first instance. Then supposing he had brought in the body of the defendant, the latter would have been entitled to his discharge, upon paying into court the sum indorsed on the writ, and 10*l.* costs. By the rule of Hilary Term, 2 Will. 4, s. 21, "bail shall be liable to the sum sworn to by the affidavit of debt, and the costs of suit, not exceeding in the whole the amount of their recognizance." The sheriff is liable to the plaintiff for not putting in and perfecting bail, he is therefore responsible to the same extent as the bail, that is, for the amount indorsed on the writ, and costs.

Alderson and Platt, B.B. concurred.

Rule absolute.

*The Queen v. The Sheriff of Middlesex.* Hilary Term, 30th January, 1846.

### Court of Bankruptcy.

#### DEFENCE.—COSTS.

*A trader filing an affidavit of a good defence to a creditor's demand, under the 5 & 6 Vict. cap. 122, s. 12, is entitled to have the summons discharged with costs.*

A trader named Fease was summoned by a creditor, under the 5 & 6 Vict. cap. 122, s. 11, and upon his appearance, the trader made a deposition upon oath, in writing, in the form specified in the schedule (B. No. 2) to the act, that he verily believed he had a good defence to the said demand. This deposition having been filed under sect. 12, Mr. Commissioner Fane ordered the summons to be discharged.

Mr. Cook, on behalf of the trader, then applied for the costs of his appearance under the summons. The 18th section enacted—"that when any trader, against whom an affidavit of debt is filed as aforesaid, shall be summoned to appear before the court in which such affidavit shall be filed, as the case may be, every such trader shall have such costs and charges as such court in its discretion shall think fit." Under this section he submitted, that the commissioner ought to compel the creditor to pay the trader's expenses, upon appearing on the summons.

Mr. Commissioner Fane felt great difficulty in saying that a creditor should be burthened with costs in every case where a trader made up his mind to swear that he believed he had a good defence to the demand. A trader who was told by his attorney that he had a good defence, might make the affidavit in the prescribed form,

without much apprehension as to the legal consequences.

Mr. Cook suggested, that it was the uniform practice of some of the learned commissioners to discharge summonses under this act with costs to be paid by the creditor, when the debtor made an affidavit in the prescribed form.

Mr. Commissioner Fane said, his own opinion certainly was against giving costs, but it was desirable there should be uniformity upon a matter of such frequent occurrence, and he should therefore consult his brother commissioners, to ascertain their views. The learned commissioner subsequently stated, that he had consulted some of his brother commissioners, and ascertained that at a meeting of the commissioners, from which he was accidentally absent, it had been determined, that when a trader filed an affidavit that he believed he had a good defence to the creditor's demand, the summons should be dismissed with costs. He confessed he thought this rule bore hardly upon creditors, and wished it might be reconsidered, but until it should be so, he felt himself bound, in deference to the resolution of his brother commissioners, to decide that the creditor must pay the costs incurred by the trader, in consequence of his appearance to the summons.

The solicitor for the creditor suggested, that perhaps the commissioner would fix the amount of the costs, by naming a specific sum.

Mr. Commissioner Fane said the costs must be ascertained by the taxing officer in the regular manner.

*In re Fane.* 13th March, 1846.

## NOTES OF THE WEEK.

### MR. TWYFORD, THE POLICE MAGISTRATE.

THE forced retirement of Mr. Twyford, who for several years acted as magistrate at the Bow Street Police Court, as announced in the *Times* newspaper, at the close of the last week, has excited some attention beyond the sphere of the profession, of which Mr. Twyford is a very old member, having been called to the bar so far back as the month of November, 1811. It is of course indispensable to the administration of justice, that the executive government should have the power of removing magistrates whose conduct, in the discharge of their magisterial functions has afforded well-grounded cause for dissatisfaction; but this power should be exercised with consideration and delicacy in every case, and, especially, as regards a magistrate of many years' standing, who relinquished the practice of his profession, and against whom no charge of corruption or partiality is even insinuated. We are not sufficiently acquainted with the facts to be able to state whether these

considerations had their due weight in the communications which passed between the Secretary of State for the Home Department and Mr. Twyford; but we should deeply lament if magistrates, or any persons filling situations of a quasi judicial character, were brought to feel that their offices depended upon the popularity of their manners. We are glad to learn, that Mr. Twyford retires upon the usual pension.

### SUGGESTED TRANSFER OF THE JURISDICTION OF INSOLVENT CASES.

It is stated in the daily prints to be in immediate contemplation to restore to the Commissioners sitting in Portugal Street, the exclusive administration of the law relating to Insolvent Debtors, which they now share with the Commissioners of the Court of Bankruptcy in town and country. We have not been able to discover that there is any authority for this statement beyond the fact, that the transfer is strongly recommended in the report of the committee of merchants and traders, on the subject of the law of Debtor and Creditor. The bill introduced into the House of Commons by Mr. Masterman and Mr. Hawes, contains no provision restricting the jurisdiction of the Court of Bankruptcy.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### NEW BILLS.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—Waiting for Report of Committee. See the bill, p. 354, *ante*. Lord Deane.

Duties of Constables, &c.—In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor. See the bill, p. 452, *ante*.

Administration of Criminal Justice. See the bill, p. 377, *ante*. Lord Denman.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. Lord Denman.

Real Property Burdens.—In Select Committee.

Metropolitan Buildings.—For 2nd reading.

#### CHARITABLE TRUSTS.

Several petitions have been presented praying to be heard by counsel against this bill.

## House of Commons.

## NEW BILLS.

Roman Catholics' Relief. — In Committee. See the bill, p. 402, ante. Mr. Watson.

Small Debt Courts: *77013200*

Somerset,

Northampton,

Birkenhead,

St. Austell. For 2nd reading.

Metropolis Buildings. — Passed. — See the bill, p. 426, ante.

Friendly Societies. — In Committee. Mr. T. S. Duncombe.

Poor Removal. — For 2nd reading. Sir J. Graham.

## INNS OF COURT.

Returns, pursuant to the order of the House, have been presented and ordered to be printed.

## EXPIRING LAWS.

The report of the Committee has been presented.

## COURT OF CHANCERY.

## EASTER VACATION.

THE Lord Chancellor has just issued an order, fixing the Easter Vacation to commence on the 4th April, and end on the 14th.

## THE EDITOR'S LETTER BOX.

Our First Series of the Analytical Digest of all Reported Cases for the present legal year, comprised 7 Common Law parts, 3 Equity, 2 of Appeal Cases, and 1 Ecclesiastical. We are now preparing our Second Series:—towards which we have already 4 Common Law parts, 2 of Equity, and 1 of Appeal Cases.

Our readers will observe, that the notes and commentaries on the decisions, and on the previous cases bearing on the important doctrines to which they relate, are more and more fully considered and discussed by the learned contributors, to whom we are much indebted for a great improvement in this department of our work. We expected that our practical readers would duly appreciate these articles, and are gratified by their favourable opinions. Here, certainly, they find regularly "posted up" all kinds of useful information, with the result of every legislative and judicial alteration in the law, or the mode of administering it.

Now that some of the good old usages of the Inns of Court are about to be revived, we are disposed to accommodate some of our correspondents who "put cases," (as they used anciently to be called). They must be very concise, and on material points. We cannot incur the responsibility ourselves nor encroach on the rights of practitioners, by answer-

ing these cases, but leave them to other correspondents. The following is from Uttoreter:

*Mortgage.*—Suppose A. being entitled to an equitable reversionary interest, mortgage the same to B., who transfers his mortgage security and all his interest thereunder to C., (A. not being a party to the deed of transfer,) would a "further charge" made direct to C. by A., have the same effect and be as valid as a further charge from A. to B. would have been, in case the latter had not assigned?

A Supplement to Mr. Kolla Rouse's *Election Manual* will be published in a few days. This, with the original work, will be found very useful to all persons engaged in and about parliamentary elections. There are many works on Election Law, but none practically suggesting the machinery required, and pointing out the duties of every person engaged in conducting an election.

"A Five Years' Subscriber" is informed, that the affidavit of entering and delivering notices of admission on the Roll, is required by the rule of Easter Term, 1840. The answers of the barrister may be given in the form of a certificate answering the substance of the questions:—namely, that the service has been faithful and diligent, that there has been no absence without permission, nor any engagement in other than professional business, &c. The old general form will not be sufficient. The questions should in effect be answered, in lieu of the affidavit which the barrister had formerly to make.

*Inclosure Commission.*—It may be useful to some of our readers to know that the office of the Inclosure Commissioners is at No. 5, New Street, Spring Gardens.

"An Articled Clerk" at Chester is informed, that all the clauses in the *Transfer of Property Act, 7 & 8 Vict. c. 76*, are repealed by the Act for Amending the Law of Real Property, 8 & 9 Vict. c. 106, and re-enacted in a modified way, except two of them:—1st, that which enabled executors and administrators of a mortgagee to convey the legal estate; and 2nd, that which enabled trustees to give discharges for trust monies.

Some of the gentlemen at the equity bar named in the daily papers as likely to be promoted to the rank of Queen's Counsel, have not applied for that honour; and we therefore do not consider it proper to give further publicity to the rumour.

The Digest of Examination Questions, of which a second edition was published last October, will supply useful exercises to our correspondents, "An Inquirer," and "An Articled Clerk."

M. T. Phillips Building  
 St. Asaph, N. H.  
 Birkbeck,  
 Northampton,  
 Somerset,  
 Small Debt Courts :  
 See the bill, p. 402, ante. Mr. Watson.  
 Roman Catholics, Relief. — In Committee.  
 NEW BILL.  
 House of Commons.  
**Observer.**  
 MARCH 28, 1846.

**SATURDAY, MARCH 28, 1846.**

Graham.  
 Poor Removal — For  
 T. S. Duncombe.  
 Friendly Societies — In Committee. Mr.  
 Horat.  
 LINES OF COURT.

mission many years ago, and the disclosures which then took place are useful chronicled by the House file of commis-

Amongst the large mass of charitable institutions throughout the country, which reflect so much credit on the times in which they were founded, there are many wholly supported by funds derived from the munificence of benefactors long ago deceased, and in some cases, where a personal connexion and interest has ceased between the donor or his family and the trustees or officers who administer the charity, it may be beneficial not only to inquire into the receipts and payments of such charities, but to place them under the control of a board of commissioners and managers, accountable to the favourable mode of proceeding of these donors.

- The case, however, is very different with regard to another class of charities, such as the hospitals in London and other institutions supported by voluntary contributions, the management of which is confided to the governors of existing societies, or corporations, who are not only themselves large donors and contributors to the funds of the charity, but devote their time and attention without remuneration to its affairs. While the governors derive no emolument from the funds, their active co-operation in the business of the charity, and their participation in its government, frequently produce a strong interest in the welfare of the charity, that they bestow large donations during their lives, and still larger legacies under their wills.

Now, it is feared there would be great danger of the entire loss of such legacies and donations in future, if this measure were carried into effect, because the direct tendency of official interference would be

to annihilate individual interest and responsibility. The governing bodies of these hospitals consist of gentlemen of fortune who devote much of their time and attention to the interests of the institution. They would probably deem it unnecessary to attend, even if they did not dislike to subject themselves to the supervision of commissioners and inspectors. The credit of good management would belong to others, and they would not take upon themselves the responsibility of office, and subject themselves to the compulsory attendance, and the penalties imposed by the bill.

It is evident, therefore, that a distinction should be made between the charitable foundations in which the active support of the charity has long ceased, and where the due administration of its existing funds is alone to be kept in view, and those foundations in which charitable energy is still alive, supporting the institution with its exertions, and maintaining it with its funds. A government control may perpetuate the benefits of the former, whilst a foreign interference, however slight, with the latter, is likely to peril its existence.

Neither does there appear to be any necessity for interfering in the revenues of the royal hospitals, where permanent regulations exist, which have been made with the greatest care and caution, as well in the mode of keeping and auditing the accounts, as in controlling the expenditure. The fact is, that annual accounts are submitted to the entire body, and are periodically printed and sent to each governor.

We should therefore hope, that the bill will be so altered in committee as to remove this serious objection, lest it peril the whole measure. We think the summary jurisdiction in small charities will be useful, and that in a considerable class, perhaps a majority of the larger charitable institutions, an inquiry into the trust funds and their application, may also be advantageous; but we trust no risk will be run of injuring our noble hospitals and other institutions which depend on voluntary subscriptions, and which are best governed by those who have provided the funds, and are likely to continue and increase their amount. We conclude there is no intention on the part of government to make up the deficiency, if the "incumbance of their help" should be prejudicial!

## POINTS IN COMMON LAW.

### WHAT CONSTITUTES AN IMPRISONMENT.

APPRECIATING unanimity in judicial decisions, and aware that a diversity of opinion amongst the judges detracts in some degree from the authority of cases determined by them, we confess we are not sorry occasionally to discover those learned personages taking and expounding adverse views upon the discussion of legal questions. Such differences afford the public some assurance that points of constitutional or practical importance are thoroughly investigated; that the lights derived from experience and learning are freely thrown upon them; and that the decision of such cases in our courts is not the result of indolent acquiescence or negligent indifference. These observations are suggested by a case lately reported,\* in which it appears, that, after a lengthened deliberation and much communication oral and written, Lord Denman, C. J., dissented from the other judges of the Court of Queen's Bench, in respect of a matter which the noble and learned lord himself describes, as "of first principle, or rather of the understanding of simple and distinct, legal language."

The question upon which this difference of opinion arose, was simply, what amounts to an imprisonment in point of law? and a careful perusal of the opinions delivered by the learned judges, *seriatim*, as is usual when they differ in opinion, may suggest ground for regret that the point was not brought before the Court of Queen's Bench in such a shape, that the decision of that court could be submitted for the determination of a court of error, the adjudication by which might be considered binding on future judges.

The facts in the case of *Bird v. Jones*, were as follow:—A part of Hammermith Bridge, ordinarily used as a public footway, was appropriated for seats, and let out by the bridge company for hire, to view a regatta on the Thames; and for this purpose was separated from the carriage-way across the bridge, by a temporary fence. The plaintiff, who was on foot, insisted on passing along the footway so appropriated, and attempted to climb over the fence, when the defendant, who was the clerk of the bridge company, seized his coat and endeavoured to pull him back. The plaintiff, however, succeeded in climbing over the fence, but was then prevented from proceeding along the footway, by two policemen placed

\* *Bird v. Jones*, 15 Law. Jour. 82, Q. B.

there by the defendant. The plaintiff was then told, that he might go back upon the carriage-way, and proceed in that direction to the other side of the bridge, if he pleased. This the plaintiff declined to do, and after staying for nearly half an hour upon the spot where he had alighted, when he surmounted the railing, he endeavoured to force his way along the footway where the policemen were stationed, and in so doing assaulted the defendant, who thereupon gave him into custody, and the plaintiff was then taken to the station house, and confined there the whole of the night. Under these circumstances, the plaintiff brought his action for assault and false imprisonment, to which the defendant pleaded:—1st, not guilty; 2ndly, to the assault, *an assault done*; and lastly, as to the imprisonment, that the plaintiff assaulted the defendant, and the defendant gave him in charge, which was the imprisonment complained of. Lord Denman, C. J., who tried the cause, told the jury, that seizing the plaintiff in the first instance was undoubtedly an assault, and that if they considered the whole transaction continuous, preventing the plaintiff from proceeding along the footway over the bridge, was the commencement of the imprisonment. The jury returned a verdict for the plaintiff, damages 50*l.*, and a rule nisi was afterwards obtained for a new trial, on the ground that Lord Denman had misdirected the jury, by informing them, that preventing the plaintiff from proceeding in one direction over the bridge was an imprisonment.

In the course of the argument, as well as in the judgment delivered by the learned judges, it appears to have been conceded, that the bridge company were not justified in preventing the public from passing along the footway, under the circumstances, and the only question discussed was, whether the restraint put upon the plaintiff's motions, by the direction of the defendant, amounted to an imprisonment in law.

Coleridge, J., thought there was no imprisonment in this case. To call it so was to confound partial obstruction of passage with total obstruction and detention. A prison might have its boundary large or narrow, but a boundary it must have, and from that boundary the party imprisoned must be prevented from escaping. The difficulty seemed to arise from confounding imprisonment of the body with mere loss of freedom. Imprisonment was something more than mere loss of freedom, it included the action of restraint within limits, defined by a wall or any exterior barrier. If the present case amounted to an imprisonment, any obstruction of the exercise of a right of way would be an imprisonment. It might be said, that there must be something like personal menace or force accompanying the obstruction, and with this it would amount to an imprisonment. Suppose a street to be walked up at one end, and an armed force placed to prevent persons scaling the wall, whilst the other end of the

street was left open. Could it be justly said that the street was a prison, or the inhabitants of the houses imprisoned? He was unable to discover any authority to sustain such a view, and therefore was of opinion, that the rule for a new trial must be made absolute.<sup>b</sup>

Williams, J., was ready to admit, that if a partial restraint of the will was sufficient to constitute an imprisonment, it undoubtedly took place in this case. The plaintiff wished to go in a particular direction, but was prevented, at the same time another course was open to him. According to the usual definition of the word "imprisonment," this did not amount to it. If a person in custody walked in a direction pointed out by a constable, that would amount to a constructive imprisonment of the person, although no force should be used, as the party arrested must feel that he had no option but to go in the direction pointed out; but if a person erected an obstruction across a public highway, and another, who had a right of passage, was deprived of this right, and compelled to take a circuitous route to his place of destination, although other remedies might be open to him, he could not maintain an action for false imprisonment. In his opinion there was no detention, warranting the supposition of a man being in prison, and having some escape open to him if he chooses to avail himself of it.<sup>c</sup>

Patteson, J., had no doubt that in general, if a man compelled another to stay in any place or house against his will, he imprisoned that other, just as much as if he locked him up in a room, and he agreed, that it was not necessary in order to constitute an imprisonment that the person should be touched. He also agreed, that compelling a man to go in a certain direction against his will might amount to an imprisonment; but he could not bring his mind to the conclusion, that wilfully obstructing the passage of another in a particular direction, but leaving him to stay where he was, or to go in any other direction as he pleased, amounted to an imprisonment. "Imprisonment," said the learned judge, "is a total restraint of liberty of person and partial obstruction of the will." The quality of the act did not depend upon the right of the opposite party. Therefore, if it were imprisonment to prevent a man passing along a public highway, it must be equally so to prevent him passing along a footway, although he should be committing an act of trespass. His opinion was, that the only imprisonment proved was, that which occurred after the plaintiff assaulted the defendant, and when the former was taken into custody. If this view was correct, the defence, as stated in the 3rd plea, was made out, and the defendant was entitled to a new trial.<sup>d</sup>

<sup>b</sup> The learned judge referred to *Com. Dig.* tit. "Imprisonment," 2nd Institute, 482; and *Cro. Car.* 209, 210.

<sup>c</sup> Citing *Buller's Nisi Prius*, 12.

<sup>d</sup> The learned judge quoted *Schoyn's Nisi Prius*, tit. "Imprisonment," referring to Year Book, 22 Assize, fol. 104, plac. 85.

Lord Denman, C. J., with characteristic diffidence, expressed his own doubts, whether the opinion he entertained could be correct, as it differed so widely from that of his learned brothers. He thought it possible that his mind had been erroneously impressed in the first instance, by a circumstance which he always looked at with great disapprobation; namely, that the bridge company not only thought proper to raise money by obstructing a public footway, but employed policemen to effect their object, thus giving an appearance of lawful authority to what was unlawful. He could find no legal definition of unlawful imprisonment, except unlawful restraint by force on the part of one subject against another, and was not aware that any boundary was necessary to constitute an imprisonment. The fact, that the plaintiff was at liberty to go in some other direction than that in which he desired to go, was, in his opinion, matter of indifference. Although a man might be at liberty to do any thing else in the world, if by direct threats of force to be immediately exercised, he was prevented from doing that he had a right to do, it was in itself direct force. A man might be prevented from going out of a door, but told he might go out of a window. Here was an instance of a wrong, by preventing the exercise of personal liberty without a total obstruction. Could any man say this would not amount to an imprisonment? Thinking that every unlawful restraint of the person of a man by direct force amounted to an imprisonment, and that the imprisonment was made out in this case by clear and satisfactory evidence, he adhered to the opinion he had expressed at the trial; but as the other judges were of a different opinion, the rule for a new trial should be made absolute.

It is impossible to peruse the report of this case without being struck with the lack of authority which the diligence of the counsel, or the research of the judges, enabled them to bring to bear upon the point under discussion. There appears to have been only one modern case cited at the bar, and this has a very remote, if indeed it has any application to the question at issue, whilst the text-books referred to by the learned judges, were not relied upon as affording conclusive, or even satisfactory reasons for the decisions of those by whom they were cited. Fully as the subject has been discussed, perhaps it cannot yet be said to have been exhausted.

## NEW BILLS IN PARLIAMENT.

### PROSECUTORS, WITNESSES, AND JURORS.

THE following bill has been presented by

\* *Oakes v. Wood*, 2 M. & W. 791; 3 M. & W. 150.

Lord Denman to the House of Lords. The measure is considered peculiarly applicable to the present state of Ireland, but in order to avoid invidious and unnecessary distinctions in the law of the two countries, it is proposed to extend its enactments to the United Kingdom. The principle of the bill, which is to preserve witnesses, prosecutors, and jurors from undue influences, is entitled to general approval; and, in common with all the bills which have been introduced by the noble and learned Chief Justice to the House of Lords, it has the rare merit of brevity, containing, as our readers will perceive, only a single clause. We entertain some doubts, however, whether more has not been sacrificed to conciseness than was intended, or in other words, whether the beneficial operation of the act may not be injuriously abridged. It is proposed, for instance, to punish any person endeavouring to deter any person, appearing as a witness, prosecutor, or juror, from appearing on any occasion where he is, by law bound or required to appear. Now, a witness or prosecutor is not legally bound or required to appear, until he has been bound over by a recognizance, or subpoenaed to appear, and witnesses to crimes may be worked upon by various influences before they have been bound over or subpoenaed. Again, it is not a very accurate use of language to say, that a person may be deterred from appearing as a witness, by some promise of a benefit, although it might be quite correct to say he may be influenced or induced so to do. These, however, are objections which may readily be got rid of as the bill proceeds through parliament, by some slight alterations in the framework. As the bill, we presume, is intended to be carried fully into effect, we should hope, before it becomes law, it may be considered whether the punishment it enacts is not unnecessarily severe, and whether it would not be sufficient to confine its operation to criminal cases, leaving the law as it now stands with respect to proceedings in relation to civil rights.

"A BILL TO PREVENT

"Intituled an act for the punishment of such as shall endeavour to deter prosecutors, witnesses, and jurors from the discharge of their duty.

"Be it enacted by the Queen's most Excellent Majesty, by and with the advice, and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every

person who shall, in any part of the United Kingdom of Great Britain and Ireland, after the passing of this act, by any threat, either written or spoken, or by giving or offering, or promising any gift or benefit, or in any other manner, endeavour to deter any person from appearing as a witness, prosecutor, or juror, on any occasion where he is by law bound or required to appear, or from honestly discharging his duty as such witness, prosecutor, or juror, and every person who shall wilfully injure the person or the property, either real or personal, of any person who shall have appeared as a witness, prosecutor, or juror, by reason of his conduct as such shall, on being duly convicted of such offence, be liable at the discretion of the court before which he shall be so convicted, to be transported beyond the seas for any term not exceeding fifteen years nor less than seven, or to be imprisoned for any term not exceeding two years, with or without hard labour."

#### REMOVAL OF THE POOR.

The following is the analysis of the bill:—

**Section 1.** Repeal of so much of former acts of parliament as relates to the removal of poor persons settled in England.

#### II. CHARGEABILITY:

2. Declaration, that unsettled persons are to be relieved at the charge of the "parish" where they are destitute, as if they were settled there, until they are lawfully removed, or their destitution there is lawfully at an end.

3. Board of guardians empowered to charge relief in doubtful cases, subject to warrant of removal, or appeal to the commissioners.

4. The books of overseers and relieving officers made *prima facie* evidence of chargeability.

5. The commissioners, with the consent of the majority of the board of guardians, may make homeless poor a union charge.

#### III. REMOVAL:

6. Persons chargeable to a "parish" in which they are not settled, declared liable to be removed to the parishes of their settlement.

#### Restrictions on removal:

7. But persons are not to be removed from one parish to another parish in the same union. Their settlements may, however, be ascertained by order of justices.

8. Persons exempted from the liability to be removed, after five years' residence in parish, without relief.

9. Also, widows for 12 months after the death of their husbands.

10. Also, children and wives, when the father, mother, step-father or husband is not removable.

11. Also, persons chargeable through temporary sickness or disability from accident.

#### Procedure in removals:

12. Power to overseers to admit settlements, and agree to amicable removals.

13. Summons of persons liable to be removed; their examination; the warrant for their removal. Provision for the examination of persons who cannot attend the summons.

Replaces 13 & 14 Car. 2, c. 12, s. 1, as to power to remove; as to complaint to one justice, *R. v. Westwood*, 2 Bott. 782; summons, *R. v. Wykes*, 1 Bott. 818; hearing by two justices; 16; examination of infirm persons, 49 Geo. 3, c. 124, s. 4; and of prisoners, 59 Geo. 3, c. 12, s. 28.

14. Board of guardians may apply for warrant of removal after notice to the overseers. Provision for saving the power of overseers to apply for such warrant.

15. Paid officer may be appointed to conduct removals and regulations to be made with reference to his duties.

16. No removal to be made until after 40 days' notice, unless the removal be previously submitted to. In case of appeal, the removal not to be made until such appeal is ended.

Replaces 4 & 5 Will. 4, c. 76, s. 79.

17. Overseers, or persons employed by them, may execute the warrant of removal.

Replaces 54 Geo. 3, c. 170, s. 40.

18. Persons procuring removals for the purpose of causing chargeability to another parish without warrants, made subject to penalties.

19. Delivery of paupers under warrants of removal, at the workhouse of a parish or union, to be regarded as delivery to the overseers.

#### Suspension of warrants of removal:

20. Suspension of the removal; recovery of the charges incurred by such suspension.

21. Appeal where such charges exceed 10<sup>s</sup>. These two clauses replace 25 Geo. 3, c. 101; as to sick persons, *R. v. Eedon*, 2 Bott. 878; and as to the whole family, 49 Geo. 3, c. 124, s. 3; as to justices' jurisdiction, 49 Geo. 3, c. 124, s. 1; as to notice of the warrant and suspension, 4 & 5 Will. 4, c. 76, s. 84.

22. Overseers may abandon a warrant of removal, paying the costs caused to the other party.

23. The clerk of the justices to transmit a duplicate of every warrant of removal and the original depositions to the clerk of the peace.

24. The clerk of the peace, on application, to furnish copies to the overseers of the parish to which the removal is directed to be made.

#### IV. APPEAL AGAINST WARRANT OF REMOVAL:

25. The parish aggrieved by a warrant of removal may appeal, giving notice of the grounds of their appeal. Appeal to be respited only on affidavit of special circumstances. Warrants of removal made before the passing of this act may still be appealed against, as if the act had not been passed.

Replaces 13 & 14 Car. 2, c. 12, s. 2, and 3 Will. 4, c. 11, s. 10; and as to statement of periods of appeal, 4 & 5 Will. 4, c. 76, s. 81.



26. Appeals against warrants of removal from parishes out of the union not to be entered without the consent of the board of guardians. Expenses of removal to be controlled by the board of guardians.

27. Overseers may have access to the pauper touching his settlement.

Replaces 4 & 5 Will. 4, c. 76, s. 80.

28. Summons of witnesses.

29. Quarter sessions held 14 days after notice of appeal, to hear the appeal; no grounds to be gone into, but such as have been set forth in the respondents' and appellants' statements.

Replaces 8 & 9 Will. 3, c. 30, s. 6, giving, however, jurisdiction to sessions of places, not counties; restrictions to the grounds of removal and appeal, 4 & 5 Will. 4, c. 76, s. 81.

30. On the trial of the appeal, the duplicate of the warrant, and the original depositions transmitted to the clerk of the peace, may be referred to for certain purposes.

31. Costs incurred by reason of notice of removal, or of appeal, and costs of trial, and costs caused by statements of frivolous or vexatious grounds of removal or appeal, to be awarded and certified by the court; recovery of such costs.

Replaces 8 & 9 Will. 3, c. 30, s. 3, and 4 & 5 Will. 4, c. 76, s. 82.

32. Costs may be taxed by the proper officer at any time, although the court be not sitting.

See *Regina v. Long*, 1 Q. B. 740.

#### V. MAINTENANCE OF PAUPERS UNDER WARRANTS OF REMOVAL AND DURING APPEAL:

33. The cost of relief and maintenance of persons under warrant of removal incurred from the time that notice of chargeability was sent, till the time when the warrants might lawfully be executed, to be repaid to the parish. Proviso saving the provisions in clause 15, respecting suspended warrants.

Replaces 4 & 5 Will. 4, c. 76, s. 84.

#### VI. CERTIORARI:

34. Certiorari taken away.

#### VII. SERVICE OF NOTICES:

35. Notice of removal, appeal, &c. may be sent by post.

#### VIII. GUARDIANS OF PARISHES INVESTED WITH POWERS FOR REMOVAL OF POOR PERSONS:

36. Boards of guardians of single parishes may act in matters relating to the settlement and removal of the poor.

#### IX. CONSTRUCTION AND LIMITATION OF THE ACT:

37. This act to be construed as one act with the Poor Law Amendment Acts.

38. Forms set forth in the schedule to be sufficient in law in proceedings under this act.

39. The act limited to England.

40. The act may be amended this session.

#### SCHEDULE (A.)

Form of order of settlement.

#### SCHEDULE (B.)

Form of admission of settlement, &c.

#### SCHEDULE (C.)

Form of warrant of removal.

#### SCHEDULE (D.)

Form of suspension of a warrant of removal, to be endorsed on the back of such warrant.

#### SCHEDULE (E.)

Form of a permission to execute the warrant of removal, to be endorsed thereon, and order of payment of expenses incurred by the suspension.

#### SCHEDULE (F.)

Form of notice of application for a warrant of removal.

#### SCHEDULE (G.)

Form of consent of guardians to overseers appealing against warrant of removal.

### NOTICES OF NEW BOOKS.

*The Real Property Statutes of William IV. and Victoria: with Explanatory Notes, containing all the Reported Cases upon the several enactments, and a copious Index.* By WILLIAM F. BROWELL, Esq., of the Middle Temple, Barrister at Law. London: E. Spettigue, 67, Chancery Lane. 1845. Pp. 343.

In this volume Mr. Browell has collected all the important Real Property Acts of the last and present reigns, and added explanatory notes. He has also stated the decisions of the courts on the various sections, and altogether the work is of much practical utility.

The statutes thus set forth and annotated, are as follow:—

- “ 2 & 3 W. 4, c. 71 (Prescription—England).
- 2 & 3 W. 4, c. 100 (Tithes—England).
- 3 & 4 W. 4, c. 27 (Limitation—England, and partially to Ireland—subsequently extended wholly to that country).
- 7 W. 4, and 1 Vict. c. 28 (Amending last act).
- 3 & 4 W. 4, c. 74 (Fines and Recoveries—England. 4 & 5 W. 4, c. 93—Ireland).
- 11 G. 4, and 1 W. 4, c. 47 (Debts—England—Ireland).
- 2 & 3 Vict. c. 60 (Expensing and extending last act).
- 3 & 4 W. 4, c. 104 (Debts—England—Ireland).
- 3 & 4 W. 4, c. 105 (Dower—England—Ireland).
- 3 & 4 W. 4, c. 106 (Inheritance—England—Ireland).
- 4 & 5 W. 4, c. 22 (Apportionment—England—Ireland).

4 & 5 W. 4, c. 23 *Eachest*—England—  
Ireland).

1 & 2 Vict. c. 69 (Explaining last act).

4 & 5 W. 4, c. 29 (Loans on real Securities  
in Ireland).

7 W. 4, and 1 Vict. c. 26 (Wills—England—  
Ireland).

1 & 2 Vict. c. 110 (Judgments—Real Estate  
Clauses—England. 3 & 4 Vict. c. 105—Ire-  
land).

2 & 3 Vict. c. 11 (Judgments—England).

2 & 3 Vict. c. 20 (Extending last act).

3 & 4 Vict. c. 82, s. 2 (Explaining 1 & 2  
Vict. c. 110, s. 19).

7 & 8 Vict. c. 90 (Judgments—Ireland).

4 & 5 Vict. c. 21 (Lease and Release—Eng-  
land—Ireland).

8 & 9 Vict. c. 106 (Conveyancing—England,  
and almost wholly to Ireland).

8 & 9 Vict. c. 112 (Outstanding Terms—  
England—Ireland).

8 & 9 Vict. c. 119 (Conveyancing—England  
—Ireland).

8 & 9 Vict. c. 124 (Leases—England—Ire-  
land)."

The notes contain a statement of the effect of the principal enactments, and where necessary, refer to the old, as affected by the new law. The decisions on the various parts of the several acts have been carefully collected and well arranged. As an example of their practical value, we shall select some of the annotations on the *execution and attestation of Wills*: a branch of practice of much importance to the solicitor, but to whom the cases in the Ecclesiastical Court are not so familiar as in the courts at Westminster.

The 9th section of the act (7 W. 4, and 1 Vict. c. 26,) which provides, that every will shall be in writing, and signed by the testator in the presence of two witnesses at one time, is accompanied with numerous notes, from which we extract the following:—

#### *Signature.*

"Sealing will not be a sufficient signature (2 Ves. 459; 1 Ves. jun. 13; 17 Ves. 459; 3 Curt. 117); but signature may be by mark, although the will does not contain the name of the testator (*Re Bryce*, 2 Curt. 325; see also *Re Field*, 3 Curt. 752, where the testator from paralysis had lost the use of speech, and almost of limbs.) By analogy to the decisions on the Statute of Frauds, it also seems that a mark will be sufficient, although the testator is able to write well (*Taylor v. Dening*, 3 Nev. & Per. 228; 2 Jur. 775, S. C. nom. *Baker v. Dening*, 8 Ad. & E. 94; *Wilson v. Beddard*, 12 Sim. 28.) The following, being the concluding words of a will, "signed and sealed as and for the will of me, C. E. T." were held to be a sufficient signature (*Re Woodington*, 2 Curt. 324.) A testator being too ill to sign, requested

another person, who had drawn the will, to sign it for him. This he did in his own name, as on behalf and by direction of testator, and it was held good (*Re Clark*, 2 Curt. 329.)

#### *Cases on position of signature.*

"Probate was refused of a will written on two sides of a sheet of paper, and signed and attested at the bottom of the first side (*Re Milsford*, 1 Curt. 912; see also *Re Martin*, 3 Cur. 754.) It was also refused where the testatrix had signed in the margin (*Re Wakeling*, 5 Jur. 1164.) But where a testator signed his name at the bottom of a printed form, ending on the second side of a sheet of paper, the will ~~being~~ ending on the first side; it was held sufficient (*Re Carver*, 3 Curt. 29; 6 Jur. 40; see also *Re Woodington*, *supra*.) The disposing part of a will was written on the first side of a sheet of paper, the second side blank, and on the third side were an attestation clause, the signature of the testator, and the subscription of the witnesses. Probate was granted (*Re Gore*, 3 Curt. 758; 7 Jur. 1094.)

"A clause appointing executors coming after the signature and attestation, was rejected, and administration with the will annexed was granted to the next of kin (*Howell's case*, 2 Curt. 342.)

"Where there is a will with the signature of the deceased at the foot thereof, and the names of two witnesses subscribed to it, the court will not, on motion upon affidavit *ex parte*, that the will was not duly executed, decree the deceased to be dead intestate (*Re Ayling*, 1 Curt. 913.)

#### *Signature by proxy.*

"An attesting witness may also sign the will for the testator, by his direction (*Re Bailey*, 1 Curt. 914; *Smith v. Harris*, 9 Jur. 406; 1 Robertson, 262;) and such a signature is good although the witness sign his own name (*Ullersperger's case*, 6 Jur. 156.) A testator being too ill to sign, requested another person, who had drawn the will, to sign it for him. This he did in his own name, as on behalf and by direction of the testator: and it was held good (*Re Clark*, 2 Curt. 329; see also *Re Regan*, 1 Curt. 908.)

#### *Acknowledgment of Signature.*

"A testator produced his will to three persons, and requested them to put their names underneath his; this was held a sufficient acknowledgment of the signature (*Gaze v. Gaze*, 7 Jur. 803; 3 Curt. 451; see also *Re Jenner*, 6 Jur. 564.) When after the signing of the will the testatrix sent for two persons to attest it, and upon their arrival the person who had drawn the will produced it, and said that these two (who were then present) had come to witness her will, and she then said, "I am glad of it, thank God," it was held to be a sufficient acknowledgment of the signature (*Re Warden*, 2 Curt. 324.) A party showed a paper to two persons present at the same time, and requested them to sign it both persons observed the signature of

party affixed to the paper; and both subscribed it in her presence. This paper, being a will, was held to have been duly executed (*Keigwin v. Keigwin*, 3 Curt. 607; 7 Jur. 840.) But the mere circumstance of a testator calling in witnesses to sign, without any further explanation, does not amount to an acknowledgment of his signature, so as to satisfy the statute (*Ilott v. Genge*, 8 Jur. 323; 3 Curt. 160.) And where a testatrix produced her will to the witnesses, and said, "Sign your names to this paper," it was held that there was no acknowledgment of the signature (*Re Rawlins*, 2 Curt. 326; see also *Hudson v. Parker*, 8 Jur. 786.)

#### Presence of witnesses.

"Where the signature was made in the presence of one witness only, who then attested it, and on a subsequent day the deceased acknowledged the will in the presence of that witness and another, who then subscribed the will, the former witness not subscribing again, probate was refused (*Re Allen*, 2 Curt. 331.) Probate was also refused where two out of three witnesses did not see the deceased sign, or know that he had signed the paper (*Re Harrison*, 2 Curt. 863; 5 Jur. 1017.) It was also refused where the deceased acknowledged the signature in the presence of one witness, who subscribed his name to the will, and on a subsequent day acknowledged the signature to another witness, who subscribed his name, the former witness being present at the time, but not again subscribing his name (*Re Simmonds*, 3 Curt. 79; 6 Jur. 349; see also *Moore v. King*, 3 Curt. 243; 7 Jur. 205.)

#### Evidence of due execution.

"Positive, affirmative evidence, by the subscribed witnesses, of the fact of signing or acknowledging the signature of a testator in their presence is not absolutely essential to the validity of a will. The Court may presume due execution by a testator upon the circumstances (*Blake v. Knight*, 7 Jur. 633; 3 Curt. 642; see also *Cooper v. Pockett*, 7 Jur. 681; 3 Curt. 648; now (February, 1846,) before judicial committee on appeal.) The evidence of one witness, the other having no recollection on the subject, will be sufficient (*Re Hare*, 13 Curt. 64; see also *Goss v. Gawn*, 3 Curt. 151.) Probate has even been granted when two of the witnesses deposed that the testator did not sign the will in their presence, the other that he did (*Chambers v. The Queen's Proctor*, 2 Curt. 443.) But where one of two witnesses deposed that the will was attested in the presence of the testatrix, and the other that it was not so attested, the Court refused to rescind the conclusion of the judge for the purpose of re-examining the attesting witnesses (*Young v. Richards*, 2 Curt. 371.) But granted the application for the purpose of examining other witnesses who were present at the time (S. C. *Id.* 373.) The evidence of one of the witnesses, although uncontradicted, is not in all cases sufficient (*Mackenzie v. Yeo*, 3 Curt. 125; see also *Pennant v. Kingscote*, 3 Curt.

642; 7 Jur. 754; see further as to presumptions when there is no form of attestation, *Bargoyne v. Showler*, *infra*, p. 204.) The acknowledgment of the signature in the presence of two witnesses is sufficient even though the will should not have been actually signed by the testator, but only by his direction, for him (*Re Regan*, 1 Curt. 908.)

"As to what will be deemed 'presence,' see *Shears v. Glasscock*, Carth. 81; *Doe v. Mansfold*, 1 Mau. & S. 294; *Winchelsea v. Wanchope*, 3 Rus. 441; *Newton v. Clarke*, 2 Curt. 320; *Re Colman*, 3 Curt. 118; *Re Ellis*, 2 Curt. 395, next note.

#### Attestation in presence of testator.

"Probate of a codicil was refused because not attested in the presence of the testator, though signed in the presence of the witnesses (*Re Newman*, 1 Curt. 914.) Where one of the witnesses, being in the same room with the testator who was in bed, could not actually see him sign, nor could the testator see him attest, the bed-curtains being in the way, the execution was, nevertheless, held good (*Newton v. Clarke*, 2 Curt. 320.) But where the will was not attested in the presence of the testator, though the witnesses were near enough to hear him breathe, probate was refused (*Re Ellis*, 2 Curt. 395.) It was also refused, where the bill was subscribed by the witnesses in an adjoining room communicating with folding doors, but in such a situation that the deceased could not see them (*Re Colman*, 3 Curt. 118.)

"The will must be signed before the witnesses subscribe their names (*Re Olling*, 2 Curt. 865; 5 Jur. 1017; *Re Byrd*, 3 Curt. 117; *Cooper v. Bockett*, 3 Curt. 648; 7 Jur. 681; *Pennant v. Kingscote*, 3 Curt. 645; 7 Jur. 754.)

#### Witnesses present together.

"The witnesses must subscribe in the presence of the testator and in the presence of each other (*Moore v. King*, 3 Curt. 243; *Re Ellis*, 2 Curt. 395; *Re Colman*, 3 Curt. 118; *Re Simmonds*, 3 Curt. 79; 6 Jur. 349; see also *Re Allen*, 2 Curt. 331.)

#### Attestation by mark.

"Attestation may be by mark, and is good although a wrong surname be written opposite thereto (*Re Ashmore*, 3 Curt. 756; 7 Jur. 1045.) It is, however, extremely injudicious to have a will so attested (*Doe v. Caperton*, 9 Car. & P. 112.) When the witness is unable to write, his hand may be guided by another (*Harrison v. Black*, 6 Jur. 849; 2 Ga. & Dav. 769; 3 Ad. & B. N. S. 117); but if he make no mark, or otherwise confirm the attestation, it is not sufficient that his name be written by the other witness (*Mead's case*, 6 Jur. 851; *White's case*, 7 Jur. 1045.)

#### Witnesses need not know the paper is a Will.

"Where the paper was so folded that the witnesses did not see any writing, and the deceased

did not state that it was his will, probate was refused (*Holt v. Genge*, 5 Curt. 160; 8 Jur. 323). But ignorance of the nature of the paper is immaterial, if the witnesses see the signature (*Reignin v. Reignin*, 7 Jur. 840; 3 Curt. 607). The real property commissioners observed, that it would be unnecessary to let the witnesses know that they are attesting a will (4 Rep. 21.)

#### Cases on position of attestation.

"A will, written on the lower half of the second side of a sheet of paper, was presented (the sheet being folded broadways) to the witnesses, and was signed and subscribed on the lower half of the first side (the witnesses believing the will to be contained on the upper half of the first side.) Probate was granted with the consent of the next of kin (*Re Bullock*, 8 Curt. 750.) Probate was also granted where the signatures of the testator and witnesses were on a different page: from the disposing part of the will (*Re Gore*, 3 Curt. 758; see also *Re Davis*, 2 Curt. 748.)"

On the Conveyancing and Leases Acts of the last session, 8 & 9 Vict. cc. 119, 124, Mr. Browell thus writes:—

"Great caution appears requisite in the use of this act, as the forms in its schedules are in strictness appropriate only to the most simple conveyances. Even the common case of an appointment by a vendor seized to uses to have down to similar uses in favour of the purchaser seems one in which the act cannot with propriety be made available to any important extent; inasmuch as the form in the first schedule is that of a grant, its fee simple, and the covenants in the second schedule are framed with reference to an assurance of that simple description. The similar act respecting leases, (3 & 9 Vict. c. 124.) will probably obtain more general favour with the profession, and it may be useful to impress upon parties who choose to avail themselves of the new provisions, that more than usual care will be necessary to have their deeds accurately engrossed. The acts give a particular efficacy to a particular form of words, and the slightest deviation from that form will endanger the operation of the statute with reference to the covenant in which the mistake occurs; and such covenant may then, under the 6th section of the former, or the 4th section of the latter act, be left to the very doubtful effect it may have by its own independent operation."

The following are the learned editor's remarks on the Outstanding Terms Act, 8 & 9 Vict. c. 112:

"It is impossible to say what construction may be put judicially upon the words 'satisfied term' in this act; but if the general understanding of conveyancers be adopted, it may be described generally as a term which is held upon no other trust than to attend the reversion,

whether it be by express declaration or by implication of law. When the trust arose in the former mode, i. e. when the reversioner had obtained an assignment in trust for himself, it protected him from all means incumbrances whatever, except specialty crown debts; and the intention of the act is that the term so assigned shall continue to give that protection: the statute thus preserves existing interests. But after the 31st December, 1845, such assignment is impossible; and therefore persons who had not by that day obtained an assignment, are absolutely debarred from all benefit of terms which may be held to be satisfied within the meaning of the act. The owner on that day of the reversion may himself be entitled to the benefit, but he cannot transfer it to a purchaser or mortgagee. It will thus become a matter of paramount importance in all cases to obtain a clear marketable title to the freehold.

"It will be observed that the act continues the protection of the term only in those cases where it was attendant by express declaration. There were, however, other modes of making the term available as a protection, viz., by getting possession of the deeds relating thereto, (11 Ves. 271), or by procuring the concurrence of the trustees thereof in the conveyance of the reversion (2 Vern. 599; 1 Term Rep. 768; 11 Ves. 270.) If the intention of the act was to preserve existing interests in all cases, it appears to have succeeded but imperfectly in its object."

"Before it can be assumed that a term is brought within the operation of the act, there must be a full disclosure of the trusts or purposes for which it was created, or to which it may have become subsequently liable, and the clearest evidence that none of them are still subsisting, or capable of taking effect. It is obvious that difficulties will frequently arise in satisfying a purchaser upon these points; and whenever he omits to obtain an assignment, he will be liable to have the term used against him in ejectment, and may have the onus cast upon himself of proving that the term is satisfied. Even possession of the deeds relating to the term will not prevail against an actual assignment to a future purchaser without notice; and such purchaser will perhaps be enabled to give a continued and permanent existence to the term, merely by having it assigned upon an express trust to protect him from the afterwards discovered means incumbrances. The operation of the statute is similar to that of the old proviso for ceaser, which is very rarely relied on in practice, though it might be with less hazard, inasmuch as the proviso specifies the events on which the term is to cease, and there is seldom a difficulty in proving that such events have happened; but much more than this is requisite to satisfy a purchaser that the term has ceased by force of the statute."

# SCOTTISH MERCANTILE LAW AND PRACTICE.

## BILLS OF EXCHANGE.—No. 3.

### I. THE PROTEST AS PRESERVING THE HOLDER'S CLAIM UPON DRAWER AND INDORSERS.

THE protest upon a Scottish bill of exchange is, as has already been explained, indispensably necessary for authorising execution without a precedent action at law. It may now be well, however, to explain, that the protest is necessary in Scotland for another important purpose, besides the obtaining of the writ of execution. The protest is indispensably necessary for preserving to the holder of a bill his remedy (or recourse) against the drawer and indorsers.

This principle of the Scottish mercantile law is suggested to the notice of the English practitioner, because (in respect of inland bills at least) the law seems to be different in England. A few more minute explanations will show the full operation of the Scottish rule.

1. *Protest against the Acceptor.*—No protest is necessary in Scotland in order to make good the holder's claim against the drawee of the bill. If the holder neglects to take the protest, he may still sue the acceptor of the dishonoured bill in an ordinary action at law: what he has lost in a question with the acceptor, by not protesting the bill, is his right of obtaining the writ of execution, without having brought an action.

2. *Protest as against other parties.*—In regard to all the other parties to the bill, except the drawee or acceptor, it is held in Scotland that the holder foregoes his remedy or recourse against them, unless he takes the protest. If he has not taken it, he has lost all claim upon them.

3. *No equivalent to protest.*—The want of the protest cannot be supplied in a question between the holder and the drawer or indorsers. The law having prescribed this as the means to be used by the holder for preserving his claim upon those parties, refuses to allow him to substitute any other process for it.

4. *For example, the want of the protest cannot be supplied by any of the following methods.* It cannot be supplied even by the oath of the party, that he knew of the dishonour of the bill. It cannot be supplied by the evidence of witnesses to the same effect. It cannot be supplied by a

judgment for payment obtained by the holder against the acceptor.

5. *Protest to be produced in bankruptcy.*—It will therefore be observed, as one consequence of these doctrines, that, in case of the bankruptcy of the drawer or indorsers, the protest is a necessary part of the evidence to be produced by the holder in support of a claim against their estates.

6. *Protest equivalent to assignment.*—It may be worth while likewise to remark, that, where there are funds of the drawer of a bill in the hands of the drawee, a notarial protest for non-acceptance, on presentment of the draft, is equivalent to an intimated assignment.

### II. NOTICE OF DISHONOUR, &c., AS PRESERVING THE HOLDER'S CLAIM AGAINST DRAWER AND INDORSERS.

It must be remembered that the protest, although necessary in Scotland for preserving the holder's claim against the drawer and indorsers, is not the only thing necessary for that purpose. The protest must be followed by notice to those parties. The particulars of the rules followed in Scotland as to the notice of dishonour differ sufficiently from the English rules to deserve description; such description will here be given.

1. *No notice to acceptor.*—Notice is unnecessary against the acceptor of the bill.

2. *Notice to other parties indispensable.*—Due notice forms an absolute and indispensable condition of the drawer's or indorser's responsibility. If due notice has not been given him, he is entitled absolutely to refuse payment, without proving that any loss has arisen from the want of notice.

3. *Time of giving Notice.*—Notice requires to be given within a certain time, different in foreign and in inland bills. In foreign bills, the time is regulated by the usage of merchants, and certain rules have been laid down as founded by that usage. These rules as bearing upon bills drawn between England and Scotland, it may be useful to state below (section I.H.) under that head. In inland bills in Scotland, notice within a fortnight is sufficient, but this latitude is strictly confined to inland bills and notes, and will not apply to bills drawn on or from England.

4. *Notice to parties not known.*—If the holder be ignorant of the residence of parties, whose mere names are on the bill, he is required only to use due diligence in discovering their residence, and to give

notice as soon as it can reasonably be given.

5. *What is sufficient notice.*—It is sufficient notice, if a letter, properly addressed, be in due time put into the post office; but an error in the address will make it necessary to prove the actual delivery of the letter.

6. The drawer, by consenting to a delay, or indulgence to the acceptor, waives for himself the necessity of notice.

7. *Form or import of notice.*—No particular form is required for giving notice; but every notification implies, and it is advisable to make it express distinctly, these things:—*First*, that the bill or note has been dishonoured, and how; *secondly*, that it has been protested; and, *thirdly*, that the holder claims remedy (or recourse) from the party to whom the notice is addressed, for the principal sum, interest, costs, and re-exchange. These particulars, however, are very seldom all expressed in any notice; and several difficulties which have occurred in England, as to the import of notice, cannot occur in Scotland, unless where no protest has been taken. It should be observed, however, that the notice of dishonour must give so complete a specification of the bill, as leaves no doubt with regard to its identity.

8. *Equivalents to notice.*—Bankruptcy is not equivalent to protest; neither is it equivalent to notice; but circumstances necessarily inferring knowledge of the dishonour, and of the intention to demand recourse will be enough; and the right to notice may be waived. But of course the safest policy is, not to trust to any equivalents.

### III. RULES AS TO THE NOTICE OF DISHONOUR OF BILLS DRAWN ON OR FROM ENGLAND.

It has been explained, that by the mercantile law of Scotland, the remedy of the holder of a bill against the drawer and indorsers is lost, unless he has *first*, protested the bill, and *secondly*, given due notice of its dishonour, and of his intention to come upon those parties for payment.

In section II., above, the principal rules are laid down, which are held in Scotland as to the notice of dishonour. It was remarked, however, that in regard to the time within which the notice of dishonour must be given, foreign bills (in which class are included all bills drawn on or from England) are placed under rules much stricter than those that apply to inland bills, that

is, bills drawn both on and from Scotland. Since the rules as to time, thus affecting foreign bills, are of importance to the English practitioner, such rules shall now be explained.

1. *Earliest available notice.*—It appears to be settled, both in Scotland and in England, that if the drawee refuses payment of a bill, on its being presented to him, at any period of the last day of grace, its dishonour may be notified on that day.

2. *Parties in same place.*—If all parties live in the same place, each party has a day to give notice to the person immediately before him on the bill. But, it is required in such a case, that the letter of notice shall be put into the post-office before the post of the second day goes out; so that it may reach the person to whom it is addressed by that post.

3. *Successive indorsers.*—Each indorser has a day after receiving notice, but under the limitation just mentioned, to give notice to the preceding indorser. But this is only on the footing that there has not, in the course of the transmission, been undue delay at any one stage; for, if notice to any one indorser has been beyond the day, the drawer and prior indorsers are discharged.

4. *Parties in different places.*—When the parties reside in different places, (just as when they reside in the same place,) it will be sufficient if a party gives notice by the post of the day following that on which he himself receives it, or on which he is otherwise aware of the dishonour; it being held, as in the case of parties residing in the same place, that he is not bound to neglect all his other affairs in order to give notice by the first post. When there is no post, notice should be sent by the first regular conveyance; and if there is none, it may be sent by express.

5. *Employment of Bankers.*—In both cases of parties living in the same place, and of parties living in different places, where a banker is employed to recover payment, an additional day is allowed on his account, as well as on account of any party to the bill or note; the employment of a banker being a recognised mode of recovering payment.

6. *Notice on a Sunday.*—If the day after that on which the party concerned gets notice falls on a Sunday, or on any day when he is forbidden by his religion to attend to secular affairs, he will not be bound to send notice till the following day.

## REGULATIONS OF THE INNS OF COURT.

RETURN TO AN ORDER OF THE HONOURABLE THE HOUSE OF COMMONS, DATED FEBRUARY 9, 1846;—for,

A Statement “of the Regulations of the Four Inns of Court having the power to call to the Bar, with the date of each regulation, and the authority by which it was made; and specifying any distinction made between the members of the Universities of Oxford and Cambridge, and others.”

LINCOLN'S INN.

*Lincoln's Inn, February, 1846.*

THE Society of Lincoln's Inn begs to submit, for the information of the Honourable the House of Commons, the following statement:

That the orders and regulations for the good government of the society are made from time to time by the treasurer and masters of the bench, in council summoned specially for that purpose.

That at a council held on the 30th day of June 1762, the following proposals were laid before this council by committees appointed by the four inns of court:

*Proposals, 18th June, 1762.*

That the standing for the bar be five years from admission, none to be called under the age of 21 years; and 12 terms' commons be actually kept; that masters of arts and bachelors of laws of the Universities of Oxford and Cambridge be dispensed with two years' standing, but not with any commons; no exception with regard to Ireland or the West Indies; no attorney or solicitor, clerk in chancery or exchequer, to be called until they have discontinued practice as such for two years.

The above proposals were signed by the committees of the four inns of court.

Upon the report of the committee appointed by the Society of Lincoln's Inn, the committees of the other inns of court, to the above proposals, into consideration, wherein it appeared that the above regulations were proper to be observed and practised by all the inns of court, it was ordered that for the future no person shall be called to the bar in this society before the end of five years from the time of his admission, nor shall any person be called to the bar who shall be under the age of 21 years; that every person shall actually keep commons in the hall for 12 terms before he is called to the bar; that masters of arts and bachelors of laws of the Universities of Oxford and Cambridge may be called to the bar at the end of three years from the time of their admission, but this not to dispense with keeping their usual commons.

That no person be called to the bar before the time prescribed, on account of pretences of his practising the law in Ireland or the plantations.

That no attorney, solicitor, clerk in chancery

or exchequer, shall be called to the bar until the end of two years at least after they have discontinued practising as such.

That at a council held the 31st day of May 1793, the privilege granted to masters of arts and bachelors of laws of the Universities of Oxford and Cambridge, of being called to the bar at the end of three years from the date of admission, instead of five, was extended to graduates of the University of Dublin, upon their taking either of those degrees.

That in addition to the student keeping 12 terms, agreeably to the rule of June 1762, he is required to perform nine reading exercises before 38 barristers in the hall, three of which only can be performed in one term.

*Copy of Resolutions for admission to the Society of Lincoln's Inn, made at an adjourned Council, held 21st February 1828.*

Ordered, That from and after the first day of Easter Term next, the following resolutions, submitted by the committees of the inns of court relative to admission, be adopted by this society:

I. That every application for admission shall be accompanied with a testimonial, signed by a benchor of this society, or by two barristers, attesting that the person so applying is known to the said benchor or barrister as a gentleman of character and respectability; that he is a fit person to be admitted a member of the society, and to be called to the bar.

II. That every person who shall hereafter apply to be admitted a member of this society shall sign a declaration that he is desirous of being admitted for the purpose of being called to the bar; and that he will not, without the special permission of the benchors in council, take out or apply for any certificate in pursuance of the statute 44 Geo. 3.

III. That this permission be not granted until the person has kept such commons in the hall of this society as are required to be kept to qualify him to be called to the bar.

IV. That the permission be for one year only, and that every petition for the same shall state the circumstances upon which the petitioner applies.

V. That no person be admitted of this society whose name stands on the roll of attorneys or solicitors, or who is attested to an attorney or solicitor.

P. S.—All other particulars can be found in the report of the common law commissioners, in the printed minutes of the Honourable the House of Commons: Fifth Session, 1836, p. 42.

HENRY WILLIAM PENCEL, Treasurer.

MIDDLE TEMPLE.

All regulations as to the admission of students and call to the bar are made by the authority of the masters of the bench, in parliament assembled.

To constitute a parliament it is necessary that at least five masters of the bench should be present.

The regulations now in force as to admission of students and call to the bar, are as follows:—

*Regulation dated 8th May, 1730.*—A candidate for the bar must be proposed by a master of the bench, who is required to be able to give an account to the masters of the bench of the character and qualifications of the gentleman he proposes.

*16th July, 1762.*—Twelve terms are required to be kept as a qualification for call to the bar.

A gentleman may be called to the bar at the age of 21 years, if he shall have been a member of the society for the period of five years.

*Note.*—He being otherwise entitled to be called.

*19th April, 1782.*—To keep a term a member must dine in the hall of the society at least three days in the term.

*23rd November, 1798.*—No person can be called to the English bar unless he shall, previously to his keeping any of the terms requisite for that purpose, have deposited with the treasurer the sum of 100*l.*, the same to be returned, without interest, upon his being called to the bar, or quitting the society, or, in case of death, to the personal representative. But this does not extend to any person who shall, previously to his being called to the bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two years' terms in any of the Universities of Oxford, Cambridge, or Dublin.

*Note.*—This is the only distinction made between members of the universities and others.

The name and description of every candidate for being called to the bar is published in the hall a fortnight before he is called to the bar.

*2nd July, 1805.*—If any person be offered or proposed to be admitted a member, and be rejected, a certificate of the same is immediately communicated to the other societies, notifying such rejection.

*1st June, 1811.*—The names of gentlemen proposed for the bar in this society are sent to each of the other societies; and the lists of candidates for the bar in the other inns of court, which may be sent to this house, are laid before the masters of the bench of this society.

*18th May, 1825.*—Every applicant for admission to the society must state his age, description, and residence, and the residence and designation of his father, and also that he is desirous of being admitted a member for the purpose of keeping terms for the bar; and that he will not, either directly or indirectly, without the special permission of the society by order made in parliament, apply for or take out any certificate in pursuance of the statute 44 Geo. 3, c. 98, s. 14, before he has kept such commons in the hall of this society as are required to be kept to qualify him to be called to the bar. And his application must be accompanied by a certificate signed by two barristers of the society, and must afterwards be approved by a

bencher; without which his admission cannot take place.

No recipiatur for entering into commons can be granted to any person whose name stands on the rolls of attorneys or solicitors, or who shall be engaged in any profession other than the law, or in any trade, business, or occupation. Should any person be found to act contrary to the aforesaid rules, he would be liable to be expelled the society.

*24th April, 1835.*—Persons of the full age of 23 years and upwards, whose names shall have been upon the books of the society three years, may be admitted to the bar after keeping 12 terms, provided that in all other respects they be entitled to be called to the bar.

*3rd November, 1843.*—Members of the London and Durham Universities have the same privileges as the members of Oxford and Cambridge Universities, with respect to calls to the bar.

*3rd May, 1844.*—No attorney at law, solicitor, writer to the signet or writer of the Scotch courts, proctor, notary public, or parliamentary agent, or person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet or writers of the Scotch courts, proctor, notary, parliamentary agent, clerk in chancery, or other officer in any court of law or equity, whether such clerk be articulated or in the receipt of a salary or of other remuneration for his services, is allowed to keep commons in the hall of the society, available for the purpose of being called to the bar, until such person being an attorney shall have taken his name off the rolls, nor until he and every other person above named or described shall have ceased to act or practice as such attorney, writer to the signet or writer of the Scotch courts, solicitor, proctor, notary, agent, or clerk as aforesaid.

No person can apply for or take out any certificate in pursuance of the statute 44 Geo. 3, c. 98, s. 14, without the special permission of the society by order made in parliament; under pain of expulsion; such permission not being granted until the person applying for the same shall have kept such commons in the hall of the society as are required to be kept as a qualification for the bar; and when granted, to endure for one year only, but may be renewed by order of parliament upon petition.

Every applicant for admission is required to sign a statement to the above effect.

*27th January, 1837.*—For the future the judges are requested to entertain the application of any gentleman who shall be refused admission into this inn of court; the society being willing to be bound by the decision of the judges, on such application.

EDWARD BLAND, Sub-Treasurer.

#### INNER TEMPLE.

The Regulations "as to Admission of Students and Call to the Bar," by the honourable Society of the Inner Temple, are made by the authority of the masters of the bench of



the same society assembled in parliament or bench table.

The regulations in regard to both these subjects now in force and acted upon by this society, are as follows:—

*Regulations dated 1st February, 1780.*—A person in holy orders cannot be admitted a member of this society.

*29th January, 1819.*—No person under the age of 15 years can be admitted a member of this society.

*11th February, 1829.*—No person can be admitted a student of this society without a previous examination by one barrister of the society, named for that purpose by the masters of the bench, and a certificate signed by the examiner of the competency of the candidate for admission, in classical attainments and the general subjects of a liberal education; such examination to include the Greek and Latin languages, or one of them at least, together with such subjects of history and general literature as the examiner may think suited to the age of the candidate:—*6th May, 1846*; but this regulation not to apply to any gentleman who, upon his application to be admitted a member, shall have taken the degree or have passed his examination for the degree of bachelor of arts in either of the Universities of Oxford, Cambridge, or Dublin, and shall produce a certificate to that effect.

*28th June, 1805.*—Before any person can be admitted a member of this society, his age, residence, and condition in life must be stated in writing, and such statement represented to the treasurer, or in his absence to some other bench or benchers of the society; and that no person be admitted without the approbation of such treasurer, bench or benchers, or by an order of the parliament or bench table; and in case of any misrepresentation in this particular, his admission will be avoided.

*8th February, 1828.*—That such application for admission must be accompanied with a testimonial signed by a bench or benchers of the society or by two barristers, attesting that the person so applying is known to the said bench or barristers as a gentleman of character and respectability; and that he is a fit person to be admitted a member of the society, and to be called to the bar.

That such applicant shall sign a declaration that he is desirous of being admitted for the purpose of being called to the bar; and that he will not, without the special permission of the benchers, by order made in parliament or bench table, take out or apply for any certificate in pursuance of the statute 44 Geo. 3, c. 98, to practise as a special pleader, conveyancer, or draftsman in equity; which permission is not granted until the person has kept such commons in the hall of this society as are required to be kept to qualify him to be called to the bar, viz. 12 terms; such permission is granted for one year only, and renewed upon application from time to time, at the discretion of the bench.

No person can be admitted a member of this society while engaged in trade.

*24th January, 1837.*—The judges are requested to entertain the application of any gentleman who may be refused admission into this society; this society being willing to be bound by the decision of the judges, upon such application.

*Keeping Terms.*—To keep a term the student must dine in the hall of this society two days in each of two separate full weeks of the term:—(*9th May, 1828*); except that students residing at the universities may keep their terms by dining any three days in the term.

*8th February, 1828.*—No person can be admitted into commons whose name stands on the roll of attorneys or solicitors, or who is under articles to any attorney or solicitor.

*30th January, 1844.*—No attorney-at-law, solicitor, writer to the signet or writer in the Scotch courts, proctor, notary public, parliamentary agent, or other agent to any appellate court, or other person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet or writer to the Scotch courts, proctor, notary, parliamentary agent, clerk in chancery, or other officer in any court of law or equity, whether such clerk be articulated or in the receipt of a salary or other remuneration for his services, can be allowed to keep commons in the hall of this society, available for the purpose of being called to the bar, until such person being an attorney shall have taken his name off the rolls, and until he and every other person above named and described, shall have ceased to act or practise as such attorney, writer to the signet or writer of the Scotch courts, solicitor, proctor, notary, agent, or clerk as aforesaid.

*22nd June, 1798.*—No person can keep terms in this society available for the English bar unless he shall, previous to his keeping any terms requisite for that purpose, have deposited with the treasurer of this society the sum of 100*l.*, the same to be returned upon his call to the bar, quitting the society, or in case of his death, to his personal representative; but this order not to apply to any person who shall, previous to his being called to the bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two years' terms in any of the Universities of Oxford, Cambridge, or Dublin:—(*20th November, 1821*); nor to any person who shall be admitted into commons for the purpose of being called to the Irish bar, and shall produce a certificate that he has been admitted a student of King's Inn, Dublin.

#### *Calls to the bar.*

*26th June, 1762.*—No person can be called to the bar in this society, who shall not have been admitted full five years, and shall be 21 years of age, and shall have actually kept 12 terms' commons, except that masters of arts and bachelors of law of either of the Universities of Oxford or Cambridge shall not be restrained to five years' standing, but may be

called after they shall have been admitted and actually kept commons full three years.

13th June, 1793.—The privilege of the above order of 26th June, 1762, extended to the like graduates of the University of Dublin.

1st July, 1794.—But the above privilege not to extend to *mandamus* or honorary degrees.

22nd June, 1798.—The name of every gentleman offering himself for the bar must be published in the hall of this society a fortnight before the day of call.

27th November, 1807.—Every gentleman desirous of being called to the bar must make, or cause to be made, his application to one of the masters of the bench to move his call.

16th June, 1798.—No master of the bench of this society can propose any gentleman for the bar without he is able to give some account to the masters of the bench of the character and qualifications of the gentleman he proposes; and no person can be called to the bar by this society until the next parliament after that at which such person has been proposed by one of the masters of the bench.

5th July, 1794.—No person in deacon's orders can be called to the bar in this society.

4th March, 1846.

GEORGE SPENCE, *Treasurer.*

#### GRAY'S INN.

March, 1846.

The Society of Gray's Inn is one of the four Inns of court having the power of call to the bar, and they admit students to be members of the society for that purpose. The society is governed by the senior barristers, including those who have been called within the bar as Queen's counsel or by patent of precedence, and they are called readers and masters of the bench, or, more concisely, benchers. The regulations as to admission of students and call to the bar are made from time to time by the authority of the benchers, who meet together in the hall of the society, at least once a week during each law term, to regulate the affairs of the society; and such meetings are called *pensions*, and the orders made thereat, orders of pension.

In searching for the early regulations and their dates, it has been necessary to revert to the institution of this society, which appears to have been about the middle of the 14th century; but there is not any record in writing in the possession of the society, of their regulations or proceedings before the reign of Queen Elizabeth. There are, however, in the work of Sir William Dugdale, entitled "*Origines Juridicales*," some earlier statements of the regulations and proceedings of the benchers of each inn of court; and the same work contains not only the orders made by the benchers of Gray's Inn down to the reign of King Charles the Second, but also various orders made by the Judges either alone or with the privy council, and sometimes by the privy council only, for the regulation of the inns of court.

These orders and regulations, and the orders

of pension of Gray's Inn, contain many matters respecting admissions and calls to the bar, which have been repealed by subsequent orders and regulations, or have become obsolete in a great degree; and it is conceived that the date of each of these ancient regulations, or even a statement of them, is not required by the order of the honourable house.

It may, however, be shortly stated that the effect of these orders and regulations was (amongst other matters), that as to students to be admitted members, attorneys were excluded; members were to pay a fine upon admission, and were to perform certain moots or exercises, and to keep 20 terms' commons by dining in the hall of the society, before they could be called to the bar, and such call could not take place until a certain time after admittance, such time being at first nine years after admission, and afterwards reduced to eight and then to seven years; and by an order of pension made in 1603, it is stated to be the king's commandment, delivered by the judges, that none should thereafter be admitted into the society unless he were a gentleman by descent, until his Majesty's pleasure should be further known.

No order has been found in the records of this society, as having been made by the judges or privy council, since the year 1664; nor is there any material order of pension at present existing and in force, made between that period and the year 1762, when an order of pension was made, which may be considered as having superseded all former orders and regulations as to calls to the bar, and the same is as follows:—

"Gray's Inn.—At a pension held the 7th day of July, 1762, it is ordered, that for the future no person shall be called to the bar in this society before the end of five years from the time of his admission, nor shall any person be so called to the bar who shall be under the age of 21 years: That every person shall actually keep commons in the hall 12 terms before he be called to the bar: That masters of arts and bachelors of laws of the Universities of Oxford and Cambridge may be called to the bar at the end of three years from the time of their admission, but this is not to dispense with keeping their usual commons: That no person be called to the bar before the time prescribed, on account or pretence of his practising the law in Ireland or the plantations: That no attorney, solicitor, clerk in chancery or exchequer, shall be called to the bar until the end of two years at least after they shall have discontinued practising as such."

The above regulations were made after a conference with the other inns of court, who made similar orders for their respective societies.

By an order of pension of the 17th day of June, 1789, it appears that it was resolved by the four inns of court, that, from Michaelmas term then next, no articulated clerk either to an attorney or solicitor, or to a clerk in the Court of Chancery or Court of Exchequer, ought to be called to the bar until his articles should either have expired or have been cancelled for the space of two whole years; and that, in or-

der to prevent improper persons from being called to the bar before due inquiries had been made concerning their characters and qualifications, no person should be called to the bar until the next pension after that at which such person should have been proposed by one of the masters of the bench. And by an order of pension of the 29th day of June, 1793, it was ordered (after a conference with the societies of the Inner and Middle Temple,) that in the order of the year 1762, (hereinafter stated,) after the words "masters of arts and bachelors of law of the Universities of Oxford and Cambridge," the words "and of Dublin" be inserted.

By another order of pension dated the 6th day of July, 1794, it was ordered, (after a conference with the other inns of court,) that a person in deacon's orders ought not to be called to the bar; it having previously (in the year 1779) been declared to be the opinion of the society, that a person in priest's orders was not a proper person to be called to the bar, regard being had to the 76th canon, made in 1603. And by an order of pension of the 27th of December, 1794, it was ordered (after a conference with the other societies), that the privilege allowed to masters of arts and bachelors of laws, by the general rule of 1762, respecting calls to the bar, should not extend to mandamus or honorary degrees.

By an order of pension, dated the 26th day of June, 1793, it was ordered that the following resolutions (which had been agreed upon at a meeting of a committee of benchers of the four inns of court,) should be adopted and confirmed by this society; viz. That every society should be at liberty to continue or make such rules respecting the keeping of terms as then prevailed, or as they should thereafter think fit; provided that no student in any of the inns of court should be permitted to keep a term in order to his being called to the bar, without having been present in the hall, at least three days in such term, at the time when grace is said after dinner: That no person who should have been admitted into any of the inns of court since the 24th of April then last, or who should thereafter be admitted (except as thereafter excepted,) should be called to the English bar, unless he should, previous to his keeping any of the terms requisite for that purpose, have deposited with the treasurer of the society to which he belonged, the sum of 100*l*. the same to be returned, without interest, upon his being called to the bar or quitting the society, or, in case of his death, to his personal representative, but this was not to excuse him from paying his duties regularly, nor from giving the usual bond upon admission; provided that this order was not to extend to any person who should, previous to his being called to the bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two year's terms in any of the Universities of Oxford, Cambridge, or Dublin; and in case such deposit as aforesaid should have been made, the same should be immediately returned

to him, upon his producing such certificate as is above mentioned; And that the name and description of every candidate for being called to the bar, should be hung up in the hall a fortnight before he should be called to the bar.

By an order of pension dated 16th November, 1825, it was ordered, that receiving the sacrament by students, as a qualification for the English bar, should be in future dispensed with; and by another order, dated 20th April, 1836, it was ordered, that no solicitor or attorney should be allowed to keep commons for the bar until his name was taken off the rolls; and by an order dated 11th day of June, 1844, it was ordered, that from and after Trinity term, 1844, no attorney at law, solicitor, writer to the signet or writer of the Scotch courts, proctor, notary, public, parliamentary agent, or agent to any appellate court, or person acting as such, and no clerk to any master, conveyancer, special pleader, attorney, solicitor, writer to the signet or writer of the Scotch courts, proctor, notary, parliamentary agent, or agent to any appellate court, or of or to any officer in any court of law or equity (whether such clerk should be entitled or in receipt of a salary or other remuneration for his services,) should be allowed to keep commons in the hall of the society, available for the purpose of being called to the bar, until such person being an attorney should have taken his name off the rolls, and until he and every other person, above named or described should have ceased to act or practise as such attorney, solicitor, or writer of the Scotch courts, proctor, notary, agent, or clerk as aforesaid; and that no common which, after Trinity term, 1844, should be kept or attempted to be kept by any person so disqualified as aforesaid, should be allowed to him towards his qualification for the bar.

The above statement contains all the written regulations of the Society of Gray's Inn, as to admissions and calls, now considered as existing and in force, with the date of each regulation; but there are some practical regulations of a minor nature, not specifically reduced into writing, and the dates of which cannot be given, but which depend on custom and ancient usage; these regulations may be best explained by the following statement.

When a gentleman applies to be admitted as a student for the English bar he is required to fill up a printed form (a copy of which is hereto annexed.) If, upon due inquiry, no objection appear to the applicant, this form is signed by a benchers, and he is admitted upon payment of certain stamp duties and fees, and upon executing a bond with a surety, conditioned to abide by and keep the rules of the society. If any objection appears, the same is laid before the benchers when they meet, and they investigate the same. After admission and after he is of sufficient standing, and has kept the terms and has otherwise conformed to the regulations, the student intimates to the steward of the society his intention to be called to the bar; and his name and description are then screened in the dining-hall of the society for a fortnight

during term time, and his name and description are also sent to the other three inns of court; a certificate of his qualifications is then drawn up and examined by two benchers, who sign the same if found correct. These qualifications are, that the student is of full age and standing in the society, and has kept a sufficient number of terms and performed his exercises, (the latter being at present a matter of form only,) and that he is possessed of a chamber in the Inn, in his own right, or has paid a fine of 20*l.* in lieu thereof. The student then presents his petition to the benchers to be called, and produces the certificate of his qualifications, which are read at a pension of at least five benchers: and if proposed by a bencher, and no objection appears, he is at the next or some succeeding pension called before the benchers, who cause the oaths of allegiance and supremacy, or (if he is a Roman Catholic,) the oath provided for that purpose, to be administered to him; he is thereupon called to the bar and becomes a barrister, and his name as such is published in the

hall of the society. If any objection appears, the call to the bar is postponed, and the objection is carefully investigated by the benchers.

It will appear from the foregoing statement that the distinction now remaining in this society between members of the Universities of Oxford, Cambridge, and Dublin, and also members of the College of Advocates in Scotland, and other persons not being such members, is only as to the deposit of 100*l.*; which by the regulation of the year 1798, herein stated, is dispensed with in the cases therein mentioned.

It should be stated that students are admitted members of this society for the purpose of being certificated special pleaders and conveyancers, and also of being called to the Irish bar; and members are also admitted for the purpose only of holding chambers within the inn: the foregoing regulations are referred to in these cases, so far as the same apply.

THOMAS GREENE, *Treasurer.*

PRINTED FORM REFERRED TO.

Steward's Office,  
Gray's Inn.

ADMISSION DOCUMENT,  
184*.*

Amount of Stamps and Fees,  
£32 6*s.*

Name and Residence of the Person to be admitted.	Age.	First or Second Son or otherwise, as the case may be.	Name and Residence of the Father, if living—if dead, his late Abode.	For what purpose admitted.	By whom recommended.	Surety.

Deposit £100, made this      day of      184*.*      Let him be admitted.  
Steward.

I do hereby Certify, that the Applicant for Admission is the party herein described:  
Witness my hand and seal this      day of      184*.*

REPEAL OF THE CERTIFICATE DUTY.

To the Editor of the *Legal Observer.*

SIR, Many members of the profession feel deeply indebted to you for the able manner in which you have for many years past urged the repeal of this most unjust and unequal tax, and I trust, the present session of parliament will not be allowed to pass by without the subject being brought before the house, so that the profession may be relieved wholly or in part from the payment of this obnoxious and unequal tax.

Experienced as you are, sir, with all matters connected with the profession, yet still I believe

you are not fully aware how severely the payment of this annual certificate duty oppresses many men of strict honour and ability.

Frequently have you shown that it would be no loss to the revenue; and the assertion that has sometimes been made, that the duty is only levied to keep the profession respectable, is too absurd to require notice. That the annual certificate may be of use so far as preventing unqualified persons from practising, I do not attempt to deny, but let the duty be a nominal one, or at all events reduced from the present scale.

If the wealthy members of the profession could be aware how oppressively this tax falls on their poorer brethren, I think they would

liberally come forward and join in a petition for a repeal or an amelioration of this tax.

Many cases could I bring forward, showing its injustice, but I will simply name my own. My family were respectable. I entered the profession respectably. My father was a clergyman of the Church of England. I was articled, and subsequently studied under a conveyancer, and was duly admitted. I have suffered much from severe disappointments. Suffice it to say, that two years ago I re-commenced practice, but not possessing either sufficient capital or connexion, I became embarrassed before the fruits of my first exertions could be matured. From the little practice I was forming I could have made a bare existence, but the period came for the renewal of my certificate, and my creditors having swept everything away, I was without the means of taking it out, added to which ill health befel me.

You know, sir, how difficult it is for any one having been admitted, to obtain a situation in an attorney's office. The profession that cost me near 1000*l.* to enter I could no longer practise, because at the hour I was unprovided with the means to pay for my certificate. Business has presented itself, which, of course, I could not accept. Without boast, I can say I have never been guilty of a mean or ungentlemanly act in my profession.

I trust you will pardon the liberty I have thus taken, by intruding on your notice a recital of my own case; but I have felt the cause so deeply that I could not avoid mentioning it as an illustration, showing how oppressively this tax falls on certain occasions.

N.

## REMARKABLE FOREIGN TRIALS.

HAVING, in a long continued series, nearly exhausted the stock of remarkable trials in this country, we shall now resort to foreign sources, particularly in regard to cases of circumstantial evidence. These selections will be the more interesting on account of the illustrations they afford of the great diversity in the mode of conducting criminal proceedings in different countries. We commence the new series with the following, in which the evidence of a blind man was singularly conclusive against the accused.

### MARTEL'S CASE.

A citizen of Lucca, named Zambelli, went on business to England, where he settled. His affairs prospered greatly. At fifty years old, having made his fortune, he felt a desire to end his days at Lucca, near a brother. He wrote to his family. Soon another letter, dated Rouen, announced his arrival there from England, and that he should reach Lucca in about two months. This space of time was requisite for the transaction of his business at Paris, and

his journey onward. He was duly expected at Lucca; but six months passed by, and he arrived not; nor, what was stranger still, did any other letter from him reach his family, whose anxiety was extreme. Cornelius, his brother, went to Paris in search of him. He visited all the houses whither Zambelli's commerce was likely to lead him. Many persons had seen, or believed they had seen Zambelli. An individual bearing that name had claimed the payment due to bonds of a considerable amount: the merchants showed the signatures "Zambelli" at the bottom of the receipts. "All these signatures are forged," cried Cornelius. "Describe the person of the forger, so that I may bring him to justice." But it was in vain; for no one could recollect precisely the appearance of a man who had been seen so short a time.

It was plain that an audacious robbery had been committed—perhaps a murder. Cornelius went from Paris to Rouen, where he visited successively all the hotels in the place. At one of them Zambelli had been seen. He had left it for Paris, accompanied by a valet. This valet had been little noticed: besides, six or eight months had passed since the departure of Zambelli; and how could his domestic excite attention among the numbers who had inhabited this hotel, the most frequented in Rouen?

Cornelius brought his complaint before the lieutenant of police, who, like him, felt assured that a great crime had been committed between Rouen and Paris; but how could it be proved? How could the criminal be discovered? At last a sudden thought struck the lieutenant. Six or seven months since, a goldsmith, named Martel, had opened a shop at Rouen, where he was entirely unknown. There was something strange in his manner, and the expression of his face: he said nothing of his parents or family; and those who hazarded questions on this subject, received from him evasive answers, with ill-disguised embarrassment. Struck with his business being the same as Zambelli's, and acting under an involuntary presentiment, the lieutenant sent a person, who, under a pretence of making purchases, entered into conversation with Martel, in which, as if by chance, he introduced the name of Zambelli. At this name Martel grew pale, and showed signs of inquietude, looking anxiously at his questioner. This strengthened the suspicions.

The lieutenant sent a serjeant to Martel to demand payment of a bond for four hundred crowns, which had been fabricated under a false name. Martel, when he saw the bond, cried out that it was feigned, and refused to pay it. When taken to prison by the serjeant, Martel, following his first impulse, accompanied him with the security of a man who is certain he owes nothing; but soon stopping suddenly in great agitation, he said, "I am quite easy as to the bond; it is entirely false, and I can prove it. But is there nothing else against me? Have you heard of anything?" The serjeant having feigned astonishment, and protested

that he knew nothing. Martel became calm, and followed him with a firmer step to the jail, where his name was registered among the list of prisoners. An hour afterwards, he was brought before the lieutenant, who said—"Yes, the bond is false; but as you have betrayed fear, I must tell you that there are other things against you. A citizen of Lucca, named Zambelli, is dead, and you are his murderer. Deny it not: I have proofs—certain proofs. But calm your fears: Zambelli was a stranger; no one here came to avenge his death. With some sacrifices on your part, we can hush up this sad affair; only you must confess all with sincerity—your life is the price of it."

Overcome by the assurance with which the lieutenant spoke, and glad to purchase with gold the life which hung on a thread, Martel cried out, "I see—I see it is Heaven's doing, since that which no eye witnessed, save my own, is revealed. I will confess all: let my fortune save my life!" He was about to begin, when the appearance of the notary, who had been sent for to take down his confession, reused him as out of a dream. He perceived the snare, and when he was commanded to begin, he said firmly, "No, I have nothing to tell; I am innocent."

All efforts to induce him to confess were vain. He was sent to prison. But now he protested against his incarceration, declared the falseness of the bond, and accused publicly the serjeant and lieutenant, and instituted proceedings against them.

The chamber assembled to judge the matter; and stayed the proceedings for three months: the suit relative to the murder of Zambelli was brought before parliament, and Martel was transferred to the conciergerie. Every search was directed to be made to discover the body of the murdered man.

Three weeks from that time there was great excitement in the village of Argenteuil. The inhabitants had suspended their labours, quit- ted their houses, and gathered together about the door of the Hôtel de Heaume. By their earnest conversation among themselves, and their eager questioning of those who came out of the hotel, it was clear that something un- wonted was going forward there. In short, the large room of the hotel was for this day transformed into a justice-chamber, where Laurence Bigot, the king's advocate, assisted by the magistrate of Argenteuil, questioned numerous witnesses about the murder of Zam- belli.

This zealous judge, in searching for traces of the crime, had visited many villages, ques- tioned numerous officers of police; but all in vain. When he was about to return, in despair of accomplishing his object, he was informed that, some months before, a corpse had been discovered hid in a vineyard near Argenteuil. Bigot hastened thither, and the state of pre- servation of the remains enabled him, on view- ing the body, to decide clearly that it was that of Zambelli, according as he had been described by Cornelius his brother.

The magistrate began to read the evidence aloud, when he was interrupted by a piercing cry; and a blind man, whom no one had as yet perceived, presented himself before the as- sembly. It was old Gervais, a wandering beg- gar, born in the neighbourhood, well known, and much liked. When his way led through Argenteuil, he was always admitted to the hotel, and having arrived that day, he had seated himself, unnoticed, in his usual place in the chimney corner. He had sprung forward with a loud cry when, in listening as the mag- istrate read, he heard of a corpse being dis- covered among the vines.

The old man related how, many months since, he was leaving Argenteuil on his usual pilgrim- age, and had gained the high ground beyond the village, when the violent barking of a dog caused him to listen attentively. A man's voice, feeble and suppliant, was distinctly heard. "Monster!" it said; "thy master, thy benefactor—mercy! Must I die so far from my country and my brother! Mercy, mercy!" Then the blind man heard a fearful cry, like that of a dying man in his last agony, and all was silence. After a time he dis- tinguished the steps of one who seemed stag- gering under a heavy burden. "Influenced by a sudden impulse," said Gervais, "I went for- ward, asking what was the matter, and who had been moaning so?" "Nothing, nothing," said a voice in an agitated tone; "only a sick man who is being carried home, and has fainted on the way." And the voice added in a lower and menacing tone, "you may thank God that you are blind, or I would have done the same to you." I knew then that a horrible crime had been committed, and was seized with terror. All things conspired to overwhelm me with fear; for immediately a dreadful storm arose, and the loud thunder seemed to pursue the murderer. I thought the world was at an end. Trembling, I continued my journey, re- solving never to reveal what I had heard; for the criminal may belong to these parts, and the life of a poor old blind man is at the mercy of every man. But when the judge spoke of a corpse being found so near to the place where I heard the voice, I could not avoid a sudden exclamation. I have now told all; God grant that no evil comes to me for it!"

During this relation Laurence Bigot appeared absorbed in a deep reverie, which lasted long after the blind man ceased to speak. Then ad- dressing Gervais, "Old man," said he, "I wish to ask you a question; reflect well before an- swering it. Do you remember exactly the voice that you heard that day on the hill, which replied to your questions and threatened you? Do you think that you could recognise it again—recognise it so as not to confound it with any other?" "Yes my lord advocate," cried Gervais immediately; "yes! even as I should recognise the voice of my mother, if she were living still, poor woman!" "But," said the judge, "have you considered that eight or nine months have passed since then?" "It seems but a few hours ago," answered the blind man.

"My terror was great, that at this moment I seem always to hear the voice that cried for mercy, and that which spoke to me, and the awful thunder." And when Bigot still doubted, Gervais, lifting his hands to heaven, said, "God is good; and forsooth not the poor blind!" Since I lost my sight, I can hear wonderfully. Call the people of Argenteuil; they will tell you how they amuse themselves with embarrassing me, and saying, in counterfeited tones, "Who speaks to thee?" "Ask them if they have ever succeeded in deceiving me!" The people cried out that all that the blind man said was true; his knowledge of voices was wonderful.

In the great hall of audience of the Norman parliament, a special convocation assembled on Christmas eve, in the year 1677. The members were attired in black robes, and their serious countenances showed they had a rigorous office to perform. This secret meeting of parliament excited great curiosity throughout the whole town. The murder of the merchant of Lyons, the arrest of the presumed criminal, the discovery of the body of his supposed victim, the unhopful testimony given by a blind man at Argenteuil, furnished an inexhaustible subject of discussion for the crowd that thronged the avenues of the palace. Every one agreed that the day was come which would liberate an innocent man, or dismiss a murderer to the scaffold.

The parliament, after many long debates, had decided that the blind man of Argenteuil should be heard. Gervais appeared before them. His frank and circumstantial deposition made a deep impression; but some doubt still remained. It was a fearful thing to place a man's life at the mercy of the fugitive reminiscences of a blind man, who could only trust to his hearing. It seemed almost impossible that Gervais should recognise faithfully a voice which he had heard but once only. The parliament determined to prove him, and to bring before him successively all the prisoners of the conciergerie, Martel among the rest. If, after having heard them speak, the blind man spontaneously, and without once hesitating, should recognise the voice which had struck him so powerfully, this evidence, unlike to others, should be held conclusive. It was not without design that Christmas eve was chosen for this strange trial, unheard of in the annals of justice. To have brought up the prisoners together on an ordinary day, would have awakened their suspicions, perhaps suggested to them various stratagems, and thus left the success of this novel experiment to chance. On Christmas eve the order excited no surprise, as it was customary on the eve of high festivals to bring all the prisoners of the conciergerie before the parliament, who sometimes out of respect to the day, liberated those criminals who had been imprisoned for trifling offences.

Above all, as it was necessary to make the blind man understand the almost sacred importance of the judgment with which Heaven had invested him, a solemn oath was administered by the president of the assembly. The old man

took the oath in a careful, earnest manner, which left no doubts of his sincerity, and the trial commenced. Eighteen prisoners were brought up, and answered the questions proposed to them, but the old man never moved; and they, on their part, on perceiving the unknown man, evinced no sign of fear. At last the nineteenth prisoner was introduced. When shall paint his horror and stupefaction at the sight of Gervais. His features grew contracted, his hair rose up, and a sudden faintness overpowered him, so that the turnkey was obliged to lead him to a seat. When he recovered a little, his involuntary movements seemed to show the poignant remorse of a guilty and tortured soul, or perhaps the horrible regret of not having committed a second crime, and finished his work.

The president and judges only waited the result. At the first words that Martel uttered, in reply to the president's questions, the blind man, who, ignorant of his presence, had hitherto remained quiet and immovable, suddenly bent forward, becoming instantly then shrinking back with horror and fear, cried out, "It is he!—it is the voice that I heard on the heights of Argenteuil!"

The jailer led away Martel more dead than alive, obeying in this the president's order, who in a loud tone had desired him to bring out another prisoner. But this command was accompanied by a sign which the jailer understood, and some minutes after he again introduced Martel, who was interrogated under a false name. Fresh questions elicited fresh replies, but the blind man, shaking his head with an air of incredulity, immediately cried out, "No, no, it is all a feint; that is the voice which conversed with me on the heights of Argenteuil."

At last the horrible mystery was cleared up. The wretched criminal, trembling, despairing, stammered out a confession, which was now almost needless, since the magistrates were fully convinced of the truth which had been wonderfully elicited by the sole witness who could declare the crime. But a few hours passed, and Martel lay in a gloomy dungeon of the conciergerie, whilst in a public place, not far from the prison, were made the preparations for execution; for at this period the scaffold followed the sentence so rapidly, that a condemned man never beheld the morrow's sun. Ere nightfall all was over. The wretched man died penitent, confessing his crime, and denouncing the cupidity and thirst of gold, which had led him on to murder.

[Abridged from Chambers's Edinburgh Journal for Dec. 1845.]

## RECENT DECISIONS IN THE SUPREMIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

APPEARANCE FOR INFANTS.—NEW ORDERS.

Under 2 & 3 Will. 4, c. 33, and 4 & 5 Will.

4, c. 82; the court is empowered to order an appearance to be obtained for infant defendants resident abroad, and in guardians to be assigned them according to the 32nd General Order of May, 1846.

This was an application for leave to enter an appearance for infant defendants residing in the United States.

Mr. Bevir, the counsel for the plaintiff in the cause, stated, that he had been recommended by Vice-Chancellor Knight Bruce to apply to his lordship in this matter, as his Honour was doubtful whether the statutes of 2 & 3 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, were applicable to infants. Upon motion by Mr. Bevir before his Honour in July last, leave was granted to serve the defendants (the infants and their parents) with subpoena to appear and answer under the 2 & 3 Will. 4, c. 33; the question being reserved, whether such service would be good in the case of the infants? No appearance having been entered, Mr. Bevir moved in Vice-Chancellor's court, on the 12th instant, for leave to enter such appearance for the infants; but his Honour declined to make the order, considering that the construction of the statutes was too uncertain to enable him to grant the motion; intimating, however, that the application might be successfully made to the Chancellor, if his lordship should be of opinion that the court had such authority under the statutes.

The Lord Chancellor, after perusing the acts, thought that the Court of Chancery had the requisite power, and accordingly made an order for leave to serve notice of motion upon the infants, that an appearance should be entered for them by one of the solicitors of the court, to be assigned their guardian under the 32nd of the New General Orders.

*Anderson v. Stalker.* March 13, 1846.

**Production of Documents.**

*Circumstances under which the court will not order the production of a case laid before it.*

This was a motion for the production of documents. The defendant was a trustee under a settlement, who was alleged to have obtained a title to the property to himself, in breach of the trust, by means of a fine and feoffment. The documents applied for, were the case laid before counsel upon the occasion of the execution of these instruments; and the draft of the fine and feoffment.

Mr. Bird for the motion, endeavoured to distinguish the case from that of *Holmes v. Baddeley*, 5 Bea. 521, reversed on appeal; 9 Jur. 289.

But Lord Langdale held, that that case must govern the present one, and refused the motion.

*Reece v. Rye.* March 11, 1846.

*1 Vice-Chancellor Knight Bruce.*

**EXERCISE OF INFANT. — JURISDICTION. — 2 WILL. 4, c. 33, AND 4 & 5 WILL. 4, c. 82.**

*Motion for leave to enter an appearance for infant resident in America, and who had been served with the subpoena, refused; the court considering it doubtful whether such service was good, within the 4 & 5 Will. 4, c. 82, and recommending an application to the Lord Chancellor.*

Mr. Bevir moved to enter an appearance for the defendant, his wife, and their infant children, who were resident at Virginia, in the United States, and upon whom the subpoena had been served under the 4 & 5 Will. 4, c. 82, empowering courts of equity to order service of process upon the defendants who should be "resident" out of the jurisdiction of the court.

Vice-Chancellor Bruce gave leave to enter an appearance for the adult defendants, upon an undertaking, not to issue process of contempt against them, without the leave of the court; but in the absence of any authority upon the point, his Honour refused to make any order as to the infant defendants, observing, that if the court had the power of doing so under the act, the Lord Chancellor would, upon application being made to him, grant the order. He suggested that "residence" might be said to imply volition.

*Anderson v. Stalker.* Lincoln's Inn, March 12, 1846.

**Queen's Bench Practice Court.**

**WARRANT OF ATTORNEY TO COMPOUND FELONY. — SETTING ASIDE.**

*If a warrant of attorney be given, pending, and in order to compound a prosecution for felony, the court will set it aside, though it does not appear that the prosecution could have been successfully continued, and although it is sworn that the magistrate before whom it was pending, had expressed great doubt upon the subject.*

A rule had been obtained, calling upon one Thomas Turner to show cause why a warrant of attorney should not be set aside, upon the ground that it had been given on an illegal consideration.

The affidavits in support of the application stated that, on the 18th of September, 1845, Turner caused one Critchley the younger to be arrested, and taken before a magistrate, upon a charge of embezzlement; that on the 18th of October, in the same year, and pending pro-

The case was mentioned the following morning to the Lord Chancellor, when the application was granted, his lordship being of opinion, (we are informed,) that the service was good, and gave leave to serve the infant defendant with notice of motion, under the 32nd order of May, 1846, and directed that one of the solicitors of the court should be assigned to them as guardian to appear and answer.



ceedings before the magistrate, the warrant of attorney in question was given by the present applicant and others, to secure the payment of certain sums of money in respect of which part of the charge arose, and that on the 15th of October, the charge was, according to previous agreement, withdrawn, and the accused discharged. The affidavits in answer alleged that the security was given on account of debts due from the accused to the prosecutor, on account of a partnership which existed between them; that the magistrate, during the proceedings before him, had expressed grave doubts as to whether such partnership did not in fact exist; that no felony was compounded or compromised, as the same never could be, or was proved or substantiated, and it was altogether doubtful whether any criminal charge whatever could have been legally established; and that this was the cause of the withdrawal of the prosecution.

*Pigott* now showed cause, and contended that the rule must be discharged, because it was consistent with all that had taken place; that the prosecutor was totally mistaken, without any wicked intention of preferring a criminal charge in order to obtain the warrant of attorney. The court would not set aside the security, unless it was shown that a crime had actually been committed. *Ward v. Lloyd*, 13 Law Journal, (N. S.), C. P. 5.

*Petersdorf*, contra. Was there or was there not, at the time when the warrant of attorney was given, a criminal charge pending? That is the only question. Now the warrant of attorney was given on the 13th of October, but up to the 15th, the accused was not discharged; and those facts are both admitted, and are quite conclusive.

*Williams*, J. It appears to me to be perfectly clear that this warrant of attorney must be set aside. A criminal prosecution was actually pending, and the charge had not been abandoned, when the security was given. There is no pretence for supposing that its execution was not the immediate cause of the prosecutor's changing his resolution; and though the magistrate might have doubted whether a partnership did not exist, the accused might have committed, and, upon proceedings taken elsewhere, that doubt might have been removed.

Rule absolute.

*Ex parte Critchley the elder*. Hilary Term. Jan. 28, 1846.

### Exchequer.

#### BAIL.—RAILWAY SHARES.

*Shares in a railway company in actual operation are property in respect of which bail may justify.*

In a case removed by certiorari from the Lord Mayor's court; bail came up to justify. The qualification relied on was shares in certain railway companies in actual operation.

*Morris* objected to the bail, on the ground that railway shares were of a fluctuating nature,

and that if a sale were forced, might prove of no value whatever.

*Alderson*, B. Railway shares are actual property, and that is sufficient. Even money itself fluctuates in value.

*Henderson* appeared in support of the bail.

Bail allowed.

*Anon*. Hilary Term, 1846.

#### AFFIDAVIT.—MISNOMER.

*Where a defendant was sued by the name of "Frederick Colston Prosser," an affidavit in support of an application to set aside proceedings, in which the defendant was described as Frederick C. Prosser, held bad.*

A RULE nisi had been obtained to set aside proceedings for irregularity, against which

*Bail* showed cause, and objected, that the affidavit in support of the rule was improperly entitled. The title of the cause was "*Henry Symes v. Frederick Colston Prosser*," but the affidavit in support of the application to set aside the proceedings, was entitled, "*Henry Symes v. Frederick C. Prosser*." When an action was brought against a defendant by the initial of his christian name, "W." it was held, that an affidavit in support of an attachment against the sheriff for not returning a *seri facies*, could not be read, because it described the defendant by the christian name of "William." *Regina v. Sheriff of Surrey*, 8 Dowl. P. C. 511.

*Gray*, in support of the rule, submitted that the identity of the defendant sufficiently appeared.

The Court were of opinion that the affidavit was bad, but intimated, that they would allow it to be re-entitled, whereupon the objection was waived, and cause shown upon the merits.

*Symes v. Prosser*. Hilary Term, 30th Jan. 1846.

### Court of Bankruptcy.

#### INSOLVENT'S PETITION.

*An insolvent is not at liberty to add any material allegation to the form of petition prescribed by statute 7 & 8 Vict. c. 96, s. 2.*

*James Phineas Davis*, having been discharged on the 13th January, 1846, by the Court for the Relief of Insolvent Debtors, under the 1st & 2nd Vict. c. 110, presented a petition to this court on the 25th day of February, 1846, for protection from process, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96. The insolvent's petition followed the form prescribed by the latter act, in all particulars, save that in the following allegation the words in italics were introduced to meet the peculiar circumstances of the petitioner's case. The petition ran thus:—"That your petitioner has not parted with, or charged, any of his property, (except property given up to his creditors under my petition to the Court for Relief of Insolvent Debtors, for

the necessary support of himself and his family, and the necessary expenses (not exceeding *nothing*) of this his petition, or in the ordinary course of trade, at any time within three months of the date of filing this his petition, or at any time with a view to this petition."

When the petitioner came up before Mr. Commissioner *Hobroyd*, he was opposed by Mr. *Parnell* on behalf of a creditor, on the ground that the interpolation in the petition, by the introduction of the words above marked in *italics*, deprived the petitioner of a *locus standi*. The 7 & 8 Vict. c. 96, s. 2, enacts, "that every petition from process presented after the commencement of this act to the Court of Bankruptcy, shall be in the form specified in the schedule," (A); and "if such petition shall not be in the form herein prescribed, such petition shall be dismissed." Here then was a material variance from the form prescribed, and it was submitted that the court had no jurisdiction to entertain a petition so framed.

Mr. *Sturgeon*, for the insolvent, contended that the petition was correct, inasmuch as it was the only form consistent with the facts, and the insolvent was bound to verify his petition by affidavit.

Mr. Commissioner *Hobroyd* was clearly of opinion, that the objection pointed out was fatal. If the insolvent could not verify a petition in the form prescribed by the act of parliament, he was not entitled to the benefit of the act, and the court had no discretion left but to dismiss the petition. The petition was accordingly dismissed.

*In re James Pinness Davis.* 18th March, 1846.

## NOTES OF THE WEEK.

### NOTICE OF ADMISSION AND RE-ADMISSION.

The last day for leaving notices for admission in Trinity Term, and re-admission for the last day of Easter Term, will be Thursday, the 9th day of April.

[The above notice has been put up in the offices, in consequence of the Easter holidays falling so near term.]

### RAILWAY LIABILITIES.

AN action was tried at the Winchester assizes on the 20th inst., before Mr. Baron *Rolfe*, in which the facts appeared to be as follow:—

In the autumn of last year, a company called "The Direct Exeter and Plymouth and Devonport Railway Company," was projected. The company was registered; and on the 7th of October, twelve gentlemen were elected as the committee of management, and seven of them were the plaintiffs. There were 720 applicants for shares. The capital was to be one million, in 40,000 shares. The defendant sent a letter

requesting to have 50 shares of 25*l.* each, and undertaking to pay 2*l.* 12*s.* 6*d.* per share for all such shares as should be allotted to him. It was necessary there should be a survey, and engineers were appointed on the 14th October, lawyers were fixed upon, advertisements were published, and it was a real, honest, bona fide company. On the 15th December, an allotment of shares was made, and 40 shares were allotted to the defendant, and the deposit was to be paid on or before the 20th December. Very few persons, however, had paid any deposit. The counsel for the defendant suggested several grounds on which he contended that the defendant was not liable. The learned judge said, he was far from saying they were not worthy of attention, but there was one question of fact that was to be decided by the jury—whether the allotment in nine weeks from the time of the defendant's offer, was or was not a reasonable time; he thought it was a perfectly reasonable time.

The jury returned a verdict for the plaintiffs, damages 105*l.*

### REMOVAL OF THE COURTS.

We have not lost sight of this subject. The case has been recently strengthened by the urgency of providing an adequate depository for the public records. There is not sufficient room for them in the Victoria Tower, and the site of the present courts has therefore been suggested, as well adapted for this important subject.

We understand that notice will be given to bring the whole question before parliament soon after the Easter recess. We shall bring it under the notice of our readers in due time.

The plan of the proposed site between the Temple and Lincoln's Inn, with the surrounding law district, will be found in the first number of the present volume, p. 5.

## ORDER OF THE COURT OF CHANCERY.

### EASTER VACATION.

Thursday, March 19, 1846.

WHEREAS, by the first article of the 8th of the General Orders of this court, of the 8th day of May, 1845, it is provided that "the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct." And whereas Easter week, or a period equal thereto, has usually been observed as a vacation in the several

offices of this court. And whereas, part of Easter week will in the present year fall within Easter Term. His Lordship doth order that the Easter Vacation for the present year do commence on Saturday the 4th day of April next, and terminate on Tuesday the 14th day of April next. And that this order be entered with the registrar and set up in the several offices of this court.

(Signed) E. D. COLVILLE.

# **MASTERS EXTRAORDINARY IN CHANCERY.**

*From Feb. 24th to March 20th, 1846, both inclusive, with dates when gazetted.*

Bearcroft, Henry, Droitwich. Feb. 27.  
Hippisley, Robert, Townsend, Chewton Mendip, and Milsomer Norton. March 13.  
Ingram, Edward Russell, Stowport. March 3.  
Knapp, John, Worcester. March 10.  
Loribond, Henry, Bridgewater. March 6.  
Podmore, William Handsley, Sparkbrook, near Birmingham. March 3.  
Simpson, John James, Derby. Feb. 24.

# **DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From Feb. 24th to March 20th, 1846, both inclusive, with dates when gazetted.*

Tyacke, Thomas P., and J. G. Plomer, Attorneys and Solicitors, Helston. March 10.  
Wadsworth, John, and Edwin Patchitt, Attorneys and Solicitors, Nottingham. March 6.

# **PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.**

House of Lords.

## **NEW BILLS.**

General Registration of Deeds. — For 2nd reading. Lord Campbell.

Game Law Amendment. — Waiting for Report of Committee. See the bill, p. 354, *ante*. Lord Dacre.

Duties of Constables, &c. — In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief. — For 2nd reading. Lord Chancellor.

Charitable Trusts. — For 2nd reading. Lord Chancellor. See the bill, p. 452, *ante*.

Administration of Criminal Justice. See the bill, p. 377, *ante*. Lord Denman.

Punishment for deterring Prosecutors, Witnesses, &c. — In Committee. See the bill, p. 472, *ante*. Lord Denman.

Real Property Burdens. — In Select Committee.

Metropolitan Buildings. — For 2nd reading. See the bill, p. 426, *ante*.

## **CHARITABLE TRUSTS.**

Several farther petitions have been presented praying to be heard by counsel against this bill.

## **HOUSE OF COMMONS. NEW BILLS.**

Roman Catholics' Relief. — In Committee. See the bill, p. 402, *ante*. Mr. Watson.

## **SMALL DEBTS COURTS:**

Somerset,  
Northampton,  
Birkenhead,  
St. Austell. For 2nd reading.

Friendly Societies. — In Committee. Mr. T. S. Duncombe.

Poor Removal. — For 2nd reading. Sir J. Graham. See analysis of the bill, p. 473, *ante*.  
Annual Indemnity. — For 2nd reading. Mr. Cardwell.

## **THE EDITOR'S LETTER BOX.**

We are obliged to a correspondent who suggests that some of our Notes on Commentaries, under the head of "Points in Common Law," would be more appropriately named *Points on the Statute Law*. No doubt many of the cases observed upon, relate to the construction of statutes: still they are points decided in the common law courts. We shall, however, reconsider our classification.

We have received several useful works to be reviewed, and shall notice them as early as possible. Of some of the smaller ones, we must be content with a "brief chronicle," but we hope to observe upon them all in due season.

*Receipt Stamp.* — A correspondent referring to the "Points in Common Law," at p. 398, *ante*, with respect to the operation of the Stamp Laws, call attention to the case of *Burt v. Lee*, in which it was decided, that the receipt for the balance of an account was inadmissible, not having a 10s. receipt stamp; and he inquires, what form and what stamp must be given for the future, — a receipt for the balance of an account?

We think that Lex's grievances must be endured, and by a little deeper attention to his studies, custom will reconcile him to the annoyance. Indeed it will soon cease to attract his attention.

If Mr. Katte will send us his work on Book-keeping, we will give it such notice as we may think it entitled to, but we cannot publish his letter.

# The Legal Observer.

SATURDAY, APRIL 4, 1846.

Quod magis ad nos  
Pertinet, et nascere malum est, agitamus.

HORAT.

## THE GOVERNMENT POOR RE- MOVAL BILL

THE POOR REMOVAL BILL, presented to the House of Commons by Sir James Graham and Mr. Manners Sutton, and of which a summary appeared in the last number of the *Legal Observer*, is, as respects the legal profession, incomparably the most important measure that has been introduced, or is likely to obtain the sanction of the legislature, during the present session of parliament. The alterations in the law of settlement, announced by Sir Robert Peel at the commencement of the session, by which it is proposed that parties shall be irremovable after five years' industrial residence; and that a widow residing with her husband at the time of his death, shall not be removable from the parish in which he died for twelve months after his decease, are contained in two short sections. There are 88 other sections, and seven schedules to the bill, containing provisions effecting the most extensive alterations in various branches of the law, connected with the administration of Relief to the Poor. Portions of 17 acts of parliament, beginning with the 13 & 14 Car. 2, c. 12, and terminating with the Poor Law Amendment Act, (4 & 5 Will. 4, c. 76.) are expressly repealed; and there is scarcely a single head of the Law of Settlement which is not subjected to some degree of change.

A deliberate review of its multitudinous enactments, suggest the alternative, that the bill has been framed hastily and without sufficient consideration, or that the capacity of the former was inadequate to the extent of the task imposed upon him. Everything is disturbed and nothing is settled, whilst subjects already sufficiently

complicated, are rendered more confused and uncertain. The expedient course, we apprehend, would have been, either to limit the operation of the bill to effectuating the alterations announced by Sir Robert Peel, and already specifically alluded to; or if more comprehensive changes were contemplated, to repeal the existing law of settlement, and starting afresh, declare distinctly and explicitly, in what manner and under what circumstances the right of settlement should hereafter be acquired.

The bill appears to have been framed with a view of avoiding both the courses pointed out. By section 8, persons residing five years in any parish, are not in general removable; but the five years' industrial residence does not establish a right of settlement, and supposing a person, irremovable by reason of continuous residence, to die, leaving a wife and children; where are they to be considered as settled? Are they to be removed to the settlement which the deceased parent had before the five years' residence commenced, or if the deceased father had acquired no settlement, are they removable after the expiration of twelve calendar months to the widow's maiden settlement? The bill "to consolidate and amend the laws relating to the Removal of the Poor," does not appear to contemplate the necessity of providing for circumstances of so ordinary a character! With respect to the means by which the right of settlement may still be acquired, the provisions of the bill are still more obscure and unsatisfactory. In short, guardians and magistrates, and all those who are entrusted with the local administration of the law, are left to grope their way as best they can, amongst what, without a violent figure of speech, may be called the ruins and fragments of the old law of settlements.

So far as can be inferred from the express enactments, for it would indicate more boldness than wisdom to predicate anything with confidence as to the legal effect of the provisions of the bill, the settlement by estate still continues, but settlement by renting a tenement, birth-settlements,\* and indeed every other branch of settlement is materially altered or altogether abrogated. The law known as Gilbert's Act, (22 Geo. 3, c. 83,) is not directly affected, and we presume, therefore, it is intended that these favoured localities which still continue to administer relief to the poor, under its provisions, are to remain like green spots in the desert of legislation. It is avowedly proposed, however, to repeal the whole of the existing law, so far as relates to the chargeability of persons not settled, their removal, and the proceedings consequent upon removal. In order, we presume, to render the union of parishes less objectionable, it is proposed, that there shall be no removal from one parish in a union to another parish of the same union, but if any question arises as to the parish in the union to which the pauper belongs, or to which the relief to be administered to him should be charged, it shall be decided by the board of guardians, with a right of appeal, the mode of exercising which is not very intelligible. In parishes in which a board of guardians exist, or which is included in a union, the power of determining when a warrant of removal should be appealed against, is taken from the overseers, or to state it more correctly, no appeal can be entered, unless the previous consent of the board of guardians of the parish, or union, has been obtained. Sections 79 to 84 inclusive, of the Poor Law Amendment Act, (4 & 5 Will. 4, c. 76,) in respect of which so many elaborate judgments have been pronounced by the Court of Queen's Bench during the last ten years, are now to be repealed, and other enactments substituted, varying in a greater or less degree.

Such are the leading provisions of the proposed bill. To what extent it may effect the existing law, and existing interests, by implication, is more than we can venture even to conjecture. With the principle, so far as

it is disclosed; and especially so far as it confers any additional privileges or advantages on those who are compelled to seek parochial relief, we see no cause to quarrel, but we warn those who may be disposed to look with approval on the measure because it is introduced with the professed intention to ameliorate the condition of the poor, that it affords no remedy for any one of the grievances which, justly or unjustly, have furnished matter of complaint on behalf of the recipients of parochial relief since the passing of the Poor Law Amendment Act; and we earnestly entreat the attention of all who are concerned in the administration of this branch of the law, to the details of the present bill, which are, for the most part, inconsiderately and clumsily framed.

As the bill proceeds through parliament, the opportunity will arise of entering more minutely into a critical examination of its proposed enactments. Being a part of the comprehensive plan, on the success of which the present ministry has thought fit to stake its character and official existence; doubtless every legitimate effort will be made to facilitate its progress through both houses, but there is no good reason why the measure should not receive all the amendment of which it is susceptible during its progress, without reference to the party or political considerations connected with its introduction.

## NOTES ON EQUITY.

### INSURANCE WITHOUT AN INSURABLE INTEREST.

By the 14 Geo. 3, c. 48, no insurance on life can be effected unless the party effecting the insurance have an interest in the life; and the sum to be recovered is restricted to the amount or value of that interest. Thus a creditor has an insurable interest in his debtor's life, if the debt be a fair and legitimate debt, but not if it be a gaming debt.\*

The insurance is always accessory and collateral to the debt, and is in the nature of an indemnity against loss. Consequently, if loss do not arise, nothing can be recovered upon the policy. The case of *Godsall v. Boldero* is the leading authority on this point. In that case, Houlditch, a coachmaker, was a creditor of Mr. Pitt, who, as every body knows, died insolvent.

\* Park, 639; Marshall, 776.

N.B. A settlement by birth is said to be founded on the stat. 13 & 14 Car. 2, c. 12, s. 2, which the present bill proposes to repeal. (See Greenwood's edit. of *Stanhope's Treatise on Parochial Settlements*, p. 247.)

His executors, however, paid the debt (500*l.*), though not out of Mr. Pitt's assets, but from funds obtained *aliunde*. The insurance company afterwards refusing to pay the amount secured by the policy, an action was brought against them to recover it. The judgment of the Court of King's Bench, delivered by Lord Ellenborough, was, that "this assurance, as every other to which the laws give effect, is in its nature a contract of indemnity, as distinguished from a contract by way of gaming or wagering. Now, if before the action was brought, the damage which was at first supposed likely to result from the death of Mr. Pitt, was wholly obviated by the payment of the debt, the foundation of the action on the insurance fails. And it is no objection to this answer, that the funds out of which the debt was paid, did not originally belong to the executors as part of the assets of the deceased; for though it were derived *aliunde*, the debt was equally satisfied therewith. The plaintiff, therefore, has no subsisting cause of action; and a verdict must be entered for the defendants."

There must, therefore, not only be an existing insurable interest at the time of effecting the policy, but likewise at the date of the action brought for recovering under the insurance. If this were not so, policies of insurance, which are favourites of the law, would degenerate into wagers, which the law generally endeavours to repudiate and repress.

But what shall be said when the converse of the case of *Godsall v. Boldero* arises? Suppose the insurance company to have paid the sum secured by the policy, is the original debt thereby discharged? This is not altogether an imaginary case, for something of the sort actually happened, and has very recently been made the subject of adjudication by Vice-Chancellor Wigram.

The case we are referring to is that of *Henson v. Blackwell*,<sup>b</sup> where the facts appeared to be, that Anne Webb, being entitled to an annuity which had been granted for a term of sixty years, if two persons (the grantors) or the survivor of them should so long live, intermarried with the plaintiff. The annuity was not made the subject of settlement. The plaintiff was indebted to the defendant in the sum of 200*l.* In this situation, with a view of securing satisfaction of this debt, an assign-

ment by way of mortgage, of the wife's annuity, was executed by the husband and wife to the defendant, who received some payments as they accrued due, in pursuance of this arrangement. In the following year after the execution of this deed or assignment, the defendant, without the privity or knowledge of the husband or wife, insured the life of the wife to the amount of 200*l.* The wife died in February 1835, survived by her husband; and the insurance office paid the defendant the sum intended to be secured by the policy.

The plaintiff having administered to his wife, filed his bill to redeem the annuity, praying that the defendant might be charged with the amount he received on the policy, after, of course, allowing him the premiums and expenses paid upon it. And there is no doubt that the husband was entitled so to file his bill, for upon the death of his wife, his right to the annuity became absolute.<sup>c</sup> If the wife, on the contrary, had survived her husband, the assignment would have gone for nothing, because an assignment of a chose in action, not reduced into possession, can have no effect as against the wife's survivorship. The danger, therefore, to be apprehended by the defendant when he insured the life of the wife, was, in fact, not, her death but her chance of survivorship; for the best thing that could happen to him was her death; inasmuch as by her death the right to the annuity, subject to the mortgage, would have instantly become absolute in his debtor the husband. This being so, nothing could have been stranger than the course he pursued in insuring her life, except the conduct of the insurance company in paying the amount; for they might have resisted the payment of the sum which the policy purported to secure, on the ground, that the defendant, so far from having an interest in preserving the wife's life, had actually a manifest pecuniary interest in having her speedily dispatched to the other world.

The Vice-Chancellor was, however, of opinion that the defendant, as a creditor of the husband, had such an insurable interest in the wife's life as entitled him to a guarantee against the consequences of her

<sup>c</sup> During the marriage his right to the annuity was qualified, and liable to be defeated by the wife's survivorship. But, if he survived her, he, as her administrator, would be entitled to all her personal estate which continued in action and unrecovered at her death.

surviving her husband the plaintiff. This conclusion his Honour arrived at apparently with some hesitation and difficulty, and then he held that, if the insurance had been so framed, the death of the wife would have put an end to the risk, and there would have been no room for any demand on the insurance office, any more than there was in the case of *Godsall v. Boldero*, where the payment of the money prevented the demand of indemnity from attaching. His Honour then proceeded:—"In this case, a person who is a mere stranger to the contract, requires me to decide what that contract is, as between his creditor and the insurance company; and secondly, he says he is entitled to the benefit of that contract, although, in fact, he was a perfect stranger to it. I do not say that there is anything in principle which ought to exclude him from the right which he claims. If a stranger goes to a creditor of A, and pays A's debt, there is no reason why A, on being sued for that debt, should not adopt the act of the stranger, and say, 'You have already received payment in full.'"

If this be so, (and nothing appears more reasonable,) why should not the plaintiff in the case in hand get credit for the 200*l.* paid by the insurance company. This his Honour does not very distinctly explain; at all events, the judgment, as reported, does not very clearly show the difference. But from the summary contained in the marginal note, we collect, that the result of the case was, that the money paid to the defendant by the insurance company was paid in their own wrong; and that, inasmuch as the defendant was liable to an action for payment back at the instance of the office, it would have been inequitable to hold him bound to give credit for the amount in a question between him and the plaintiff. The case, wd must say, is made obscure by omitting, or giving imperfectly, the arguments of counsel, in order to make way for a judicial exposition not distinguished by his Honour's accustomed perspicuity.

## LAW LECTURES IN THE INNS OF COURT.

We return to the important subject of law lectures; and, here, let us begin by displacing a delusion which exists respecting them. We allude to that greatest of all mistakes which has induced some mem-

bers of the profession to suppose that the learned benchers of the Inns of Court have any intention to supersede or interfere with the well-tried and advantageous system of tuition in chambers. On the contrary, the proposed lectures are constantly to be made auxiliary to that system. They are not meant to be substitutionary. The routine of the profession, the argal of the law, the pride and glory of the formalist, must still be studied under the superintendence of the experienced practitioner. The principles of the sciences are alone the true business of the lecturer.

What Mr. Justice Blackstone said on this head cannot be too often enforced.

"You will permit me," he observed, "to describe rather what I conceive an acceper of the laws should do, than what I have ever known to be done." He should consider his course as a general map of the law, marking out the shape of the country, its divisions and boundaries, its greater divisions and principal cities; it is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet. His attention should be engaged, like that of the reader in Ptolemy's *Atlas of Chancery*, in tracing out the outlines and as it were the elements of the law. For as Justinian has observed, the teacher understanding of the student, he loaded at the first with a multitude and variety of matters, it will either occasion him to desert his studies, or will carry him heavily through them with much labour, delay, and despondence.

To the same effect we have the testimony of another most eminent authority, speaking, like Blackstone himself, from a learned and varied experience. Sir James Mackintosh tells us, in his introductory chapter on the law of nations, that

"I have long been convinced that public lectures, which have been used in most ages and countries, to teach the elements of almost every part of learning, were the most convenient mode in which those elements could be taught; that they were the best adapted for the important purposes of awakening the attention of the student, of abridging his labour, of guiding his inquiries, of relieving the tediousness of private study, and of preserving in his recollection the principles of a science. For this reason, the law of England should be less adapted to this mode of instruction, or less likely to benefit by it, than any other part of knowledge."

We are, therefore, well warranted in holding that these lectures ought not to be distinguished by any very remarkable display of abstract science or profundity. (Such an exhibition would be

not only foreign to the proper business of the course, but a pure source of mis-carriage; for it would infallibly cast away the younger portion, that is to say, the majority, of the students.

We believe Sir James Mackintosh was the first who seriously attempted the revival of legal instruction in our inns of court. The history of this matter is curious: In the year 1796, being then a very young barrister, chiefly known as the author of "Vindicia Gallica," he applied to the benchers for permission to deliver lectures in Lincoln's Inn Hall. He originally proposed to treat of our own municipal institutions; but finding himself anticipated in that department by Mr. Nolan, he offered to lecture upon the law of nations. The benchers of that day, it appears, were not disposed to favour the application. Party politics ran high, and Sir James was obnoxious as a Whig. But to the eternal honour of Mr. Pitt, then a bencher of the inn, he is to be mentioned that he warmly supported the proposed scheme, (though originating with a political opponent,) and came expressly to attend the meeting of the bench when the motion was brought forward. Mr. Pitt supported it by his vote and his example: Permission accordingly was granted; and Sir James delivered, we know not for how long, his learned lucubrations. The benchers merely allowed him to lecture. They did nothing to stimulate or encourage the attendance of students.

What became of Mr. Nolan's scheme we have not learnt; but we rather think that, finding practice increase upon him, he abandoned his lectures; and this need not be wondered at, since without support from the benchers—without something more than mere toleration, it was but little likely that such a project would succeed.

Some twenty years ago, the late Mr. Oflitty delivered lectures at Lincoln's Inn on *pleading*; the use of the hall having been conceded to him for that purpose; the benchers remaining neuter, as before, or at the most, contenting themselves with saying, "be ye instructed." The attendance of students was scanty, not only because the entire proceeding was without authority, but for another reason, that the art of pleading, even in the hands of so great a proficient, did not admit of being successfully unfolded by this method of instruction. Lectures on *pid-making* would not have been more absurd. Those who aspire to become pleaders or drafts-

men must undergo the usual course of pupillage in chambers. There is no other way in which men can be qualified for the exigencies of business and practice. But while we say this on the one hand, we must insist on the other that the good to be derived from lectures, addressed to proper objects, will go beyond the mere learning imparted to the student. As aiding private study in the wilderness of books which encumber English law, the use of a competent guide is immediately apparent.

But the proposed institution will produce a result still more important in the present state of the profession—a result which, when rightly appreciated, must secure the approbation of all well-constituted minds. It will open prospects of reward and distinction to merit and ability. Young men without professional connexion, who might otherwise have pined in obscurity, will have an opportunity afforded them of showing their capacity. Examinations will be conducted in presence of benchers. Subjects for essays will be prescribed. Those who excel in these exercises will be marked out from the common herd. They will be at once recommended and introduced to the profession. The practice, moreover, of literary composition, though on legal subjects, will tend to remove a reproach to which we are told by Lord Campbell in his *Lives of the Chancellors*, English lawyers have long been obnoxious, namely, that though often good classics and mathematicians, they but very rarely appear to advantage when writing their native English.

We admit, however, that considerable difference of opinion exists on this subject. Dr. Johnson has been cited. According to Boswell, his observation was, that "lectures were once useful; but now, when all can read, and books are so numerous, lectures are unnecessary. If your attention fails and you miss a part of a lecture, it is lost. You cannot go back as you do upon a book." The great moralist was right in suggesting, as he does here, that lectures had their original necessity in the scarcity of books before the invention of printing. But extremes are known to meet; and now the very fact of the multitude of books, (*multorum camelorum onus*) is of itself one of the chief reasons why a guide in the shape of a lecturer must be of use to a student entering for the first time the thicket of the law.

We stated in our former number that a gentleman had actually been appointed to



the lectureship of the Middle Temple. We have since ascertained that this is not strictly correct. A gentleman has indeed been nominated by the committee of the bench; but the decision of the benchers at large is not expected till the beginning of Easter Term.

The scheme of the Middle Templars, as we before observed, is to have lectures on *Jurisprudence* and *Roman Law*. Now we submit, that jurisprudence has no more to do with Roman law than with any other law. Yet the proposal, as announced in the printed report of the committee, is that these subjects shall be treated of by the same individual; and not only so, but that he shall lecture *alternately* on each of them. There is something not a little comical in this. Let us suppose every day in term time to be a *class day*. The lecturer will on Monday discuss jurisprudence, on Tuesday Roman law, on Wednesday jurisprudence again, and so on. Can anything surpass this in absurdity? Yes, one thing can; and that is another of the Middle Temple regulations, whereby the committee have settled that the lecturer shall hold office for three years only. In other words, when it may reasonably be hoped that the lecturer has in some degree mastered his subject he will be expected to retire. This must prove a fine encouragement to a man of ability to devote the best energies of his mind to the business of his class, to be told that at the end of three years he must give place to some other performer who may have the good fortune to be more acceptable to the benchers. The longer a man lectures, if he have any sense of what is due to his position, the better must his lectures become. What was it that made the commentaries of Sir William Blackstone, as finally presented to the public, approach nearer to perfection than any other work of literature extant? Constant revision and improvement incident to the regular delivery of them as lectures for a long series of years; a process of annual examination and correction which made the educational labours of this great man an era in legal history.

We trust, therefore, that the learned benchers of the Middle Temple will revise this part of their scheme, and view with indulgence the well-intended criticism which we have in other respects ventured to bestow on their meritorious labours.

## CONSTRUCTION OF INSOLVENT DEBTOR'S ACT.

### EFFECT OF MIS-STATEMENT IN INSOLVENT'S SCHEDULE.

It was at one time suggested by a learned individual, more remarkable for the diversity than the profundity of his acquirements, that it would be competent for insolvents of every grade and degree of intelligence to prepare their own schedules. Those who adopted this advice, after incurring some expense and more or less of disappointment, discovered its inapplicability as regarded their own particular cases, and were compelled ultimately to resort to professional assistance, to enable them to comply with the requisitions of a branch of the law, of which they were necessarily ignorant. It is to be feared, however, that these documents are still frequently prepared by persons either insufficiently acquainted with the nature of the duty they undertake, or who do not think it worth while to devote sufficient attention to its performance.

Assuming, that even a majority of those who seek to obtain relief under the Insolvent Acts, are, what they all profess to be, persons in indigent and straitened circumstances, it is lamentable to observe, how frequently their petitions to the court of bankruptcy are dismissed, upon technical objections arising out of the noncompliance with, or deviation from, the forms prescribed by the statutes and rules of court. The practice in the insolvent debtor's court, under the stat. 1 & 2 Vict. c. 110, is better established, and the commissioners who preside in that court, as well as the practitioners, do not labour under the disadvantage of having their minds distracted by the distinctions arising out of the separate systems of bankruptcy and insolvency law, or by the varying and contradictory enactments of annual acts of parliament. From inadvertence in framing the schedules filed in that court, however, it occasionally happens that an insolvent finds himself sued for, and is compelled, to pay a debt, in respect of which he considered himself to be, and if proper diligence had been used, might have been discharged through the operation of the Insolvent Act. An instance leading to this result is to be

\* See *In re Shelter*, ante, p. 374, and *In re J. P. Davis*, p. 490.

found in the report of a late case in the Court of Exchequer.<sup>b</sup>

The defendant, Blore, owed a debt of 7l. 13s. 8d. to a Mrs. Hoyles. He took the benefit of the Insolvent Act, 1 & 2 Vict. c. 110, and inserted the plaintiff's name in his schedule as Mrs. Isles, instead of Hoyles, and the debt as to 3l., instead of 7l. 13s. 8d. The plaintiff afterwards brought an action for this debt, and the defendant pleaded his insolvency in discharge. The jury, at the trial, found, that the mis-statement in the schedule was by mistake and without fraud, but under the direction of the learned assessor to the sheriff of Middlesex, before whom the cause was tried, the verdict was taken for the plaintiff, with leave to enter a nonsuit, if the court should be of opinion that the defendant's discharge under the Insolvent Act barred the debt.

The point was fully argued before Parke, B., sitting alone; and the learned Baron's attention was particularly directed to the 1 & 2 Vict. c. 110, sect. 71, which requires notice to be given of the vesting order, the filing of the schedule, and the time and place appointed for the insolvent to be brought up, to all creditors whose debts amounted to 5l. On the other hand, the learned Baron's notice was called to the 93rd sect., which provides, that where the amount specified in the schedule is "not exactly the amount" of the true debt, the petitioner shall be entitled to the benefit of the act when the mistake has been without any culpable negligence, fraud, or evil intention.

Baron Parke expressed his regret that a point of so much novelty had not been argued before the full court. It appeared to him, however, that the description of the debtor, and the amount of the debt, stood on a different footing. With respect to the first, the question was, whether the misdescription was made with intent to mislead, and would have the effect of misleading a creditor who looked at the schedule? This question the jury had answered in the negative. As to the amount of the debt, if the error in the statement answered the description of error contemplated by the 93rd sect., it would not affect the discharge, without negligence, fraud, or evil intention. But if the sum specified, instead of "not being exactly" the true amount, was less than half that amount, and removed the creditor from a class enti-

led to special notice, the 93rd sect. did not apply. In his opinion, where the error so materially altered the condition of the creditor, the statute did not permit the adjudication to operate as a discharge, and to decide otherwise would be to deprive the words of the statute descriptive of the degree of error, of all effect. Where the debt was, by mistake, removed from a class requiring special notice to a creditor, to a class requiring no such notice, the case was not within the protection of the act, and consequently, however innocently the mistake had been made, the debtor was not entitled to his discharge. Upon these grounds the plaintiff was held to be entitled to recover his debt.

## SCOTTISH MERCANTILE LAW AND PRACTICE.

### BILLS OF EXCHANGE.—No. 4.

I. The General Doctrine of the Scottish Law of Prescription or Limitation, in Bills of Exchange.

II. Mistakes usually committed in attempting to protect bills from suffering prescription by parties not familiar with the operation and effect of the Scottish Statute of Limitation or Prescription.

III. Means for protecting Scottish Bills from Prescription, and for correcting the most usual mistakes.

IV. Rights of Creditors in Prescribed Bills, and means still open for establishing their claims.

In a recent paper of this series, (treating of "the Scottish Bill of Exchange and Scottish Open Account,") it was explained incidentally how the Law of Scotland stands in regard to the limitation or prescription of bills. The subject, however, is too important to be dismissed so cursorily.

Bills, it is true, from their nature as commercial documents, ought to be and oftenest are of short duration; yet, where difficulties and delays occur in adjusting claims, a bill does not unfrequently remain in the possession of the holder, for so long a period, as to make it of consequence that he should be acquainted with the dangers to which the lapse of time exposes him, as well as with the means by which these dangers may be diminished or prevented.

It is proposed, therefore, to give a few more explanations in regard to the Scottish law of limitation or prescription, as affecting bills of exchange and promissory notes. These explanations may be conveniently arranged under four heads:—They will treat, 1st, of the general doctrine of the Scottish law as to the pre-

<sup>b</sup> Hoyles v. Blore, 14 Mees. & W. 387, and see our own report, p. 512, post.

scription of bills; 2ndly, of certain mistakes which, in attempting to protect bills from suffering prescription, are apt to be committed; 3rdly, of the means by which alone a bill may certainly be saved from being extinguished by prescription; 4thly, of the remedies which are available after the mistake has been irretrievably committed and the prescription incurred.

## I. THE SCOTTISH LAW OF PRESCRIPTION OR LIMITATION IN BILLS OF EXCHANGE.

The law in this matter is regulated by a statute which came into force in 1772.

*Terms of the Scottish statute.*—By that statute it is enacted, "that no bill of exchange, inland bill or promissory note, shall be of force, or effectual to produce any diligence or action in that part of Great Britain called Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of six years from and after the term at which the sums in the said bills or notes became exigible."

It is further enacted, however, "that it shall and may be lawful and competent, at any time after the expiration of the said six years, to prove the debts contained in the said bills and promissory notes, and that the same are resting owing, by the oath or writ (writing) of the debtor."

In the way of direct commentary on these enactments, the following explanations may be useful.

1. *Explanation of terms.*—The word "diligence" used in the statute, is the word applied in Scotland to execution against a debtor's person, or his goods and chattels. The judgment in an action is the usual ground for execution or diligences; but in some cases, as in the case of a bill duly protested within six months, the warrant for execution may be obtained without a previous action. Another term used, "resting owing," although somewhat uncouth, will easily be understood as meaning "continuing to be owing."

2. *Time from which prescription runs.*—In regard to bills or notes, payable at a fixed term, the six years run from the last day of grace; or, if that day falls on a Sunday or holiday, they run from the day preceding. In a bill payable "on demand," the six years run from its date. In a bill payable "at sight," the point is not decisively fixed, but the safest course is to hold that the six years run from its date.

3. *Conditions imposed by the statute.*—It will be observed that in terms of the statute, the diligence must have been "raised and executed," (that is, the warrant of execution must have been not only obtained but put in force); and that the action must have been "commenced." Some particular applications of these conditions imposed by the statute, shall be noticed hereafter, but it is right in the meantime to call attention specifically to the general stringency of the enactment on this head.

4. *Separate action not necessary.*—In order to "commence action" to the effect of inter-

rupting prescription, it is not necessary that the holder of a bill should bring a separate action upon the bill, provided he makes a judicial demand, in which judgment can be competently pronounced in his favour, though it were in an action brought for his benefit in common with other creditors. It has therefore been decided that the prescription in a bill is interrupted by production of the bill and registered protest in a suit for the ranking and sale of the debtor's landed estate. The same effect follows from lodging a bill or note, with an oath of verity, in the hands of the interim factor in a sequestration. So also, a claim made in a "multiplepinding," (interpleader), or in any judicial action of competition, is held equivalent to an action.

5. *Judgment against one acceptor.*—A judgment competently obtained within the years of prescription against one of the acceptors in a bill, interrupts prescription as to all of them; for this necessarily implies that action has been "commenced" in terms of the statute, which does not distinguish between the commencement of it against one of the parties only, and against all of them.

## II. MISTAKES USUALLY COMMITTED BY PARTIES NOT FAMILIAR WITH THE OPERATION AND EFFECT OF THE SCOTTISH STATUTE OF LIMITATION OR PRESCRIPTION.

This section is appropriated to the second head, namely, an enumeration of the mistakes most likely to be committed by persons who, being aware of the general effect of prescription, attempt to guard against it. Of the mistakes now to be described, there is not one that has actually been committed and adjudged upon by courts of law; and one or two of the mistakes are of so common occurrence, that it is a duty to give distinct warning against them.

1. *Neglecting to execute the bill.*—The holder of a dishonoured bill, who has caused the protest on it to be registered within the six months required by statute, may, perhaps from carelessness to the debtor, or from some other want of neglect to take any step for putting in force the warrant for execution which he has thus obtained. If, in these circumstances, the holder supposes that he has interrupted the prescription, and saved his bill from losing its validity at the end of the six years, he is completely mistaken.

2. *Resting satisfied with an action brought by the debtor.*—The debtor in a dishonoured bill is entitled, before any warrant for execution has been executed, and even before it has been obtained, to attempt staying execution by bringing the action called a suspension, the merits of which has been explained in a preceding paper. The merits of the bill may thus come to be judicially tried within the six years, and the creditor may not unreasonably suppose that here likewise the prescription has been interrupted. But this has been decided to be as great a mistake as the other.

3. *Claiming on a private trust.*—The most

common of all mistakes, however, is the following. The person who is the debtor in a bill, executes a private trust deed for behoof of his creditors. The bill is produced by the holder and laid before the trustee, with affidavit as a ground of claim; but difficulties may intervene to prevent the trustee from recognising the debt; and it is unluckily not a case unprecedented, that a claim so presented may lie over undisposed of until after the lapse of the six years from the time when the bill was payable. The creditor may have to prosecute for the debt after the six years have elapsed; and having within the six years claimed payment of the debt in a form which is almost, though not quite judicial, he may be apt to suppose that his bill has been saved from being extinguished by prescription. He will be told by the courts before which he brings his action, that his claiming in the private trust avails him nothing. He might just as well have kept the bill for the six years in his pocket. His bill, after the lapse of the six years, is just a bit of waste paper. Doubtless, this is a case of hardship; but the law on the point is quite fixed by the Scottish courts; and the mistake is still so very far from being uncommon, that the English practitioners cannot be too earnestly urged to beware of falling into it.

The chapter of mistakes which has now been given, does not by any means exhaust the list. Those, however, which have been enumerated, are the most common and the most dangerous; and those who have studied the cases thus put, and comprehend the principle, will run no risk of falling into any of the mistakes that have not been mentioned.

### III. MEANS FOR PROTECTING BILLS FROM PRESCRIPTION, AND FOR CORRECTING THE MOST USUAL MISTAKES.

It will now be shown what the principle is; and in each of the cases put, the mistake is shown, and what, in each of them, ought to have been the creditor's mode of proceeding.

**Principle of the law of prescription.**—The principles of the law are very easily understood. The statute quoted above, enacts, that Scottish bills of exchange, shall suffer prescription or limitation, or shall lose all their validity, unless, within six years after the date at which payment of them is exigible, "diligence" shall be raised and executed, or action commenced thereon. 1st. Then, it is not enough that the writ which is the warrant for execution, (the "diligence," the statute calls it,) be taken out by the creditor; it must also be put in force;—the first step at least must be taken in the execution, and so, likewise, if the creditor shall bring an ordinary action at law for payment of the bill, he must not only take out the summons, (of which begins the action,) but he must also serve it upon the defendant; till the writ has been lawfully served, the action has not been "commenced," in terms of the statute. 2ndly. The only steps which the statute recognises, as sufficient to protect a bill from prescription, are steps properly judicial. The

"diligence" or writ of execution, is, of course, of this nature; the "action" must likewise be an action in court; and no private or extrajudicial claim is an action in terms of the statute. 3rdly. The judicial proceeding must be an action "thereon," or something equivalent to such an action;—it must be an action brought on the bill, or by the creditor in it. An action instituted by any other party is of no effect.

It is very easy to apply to the cases enumerated, all the three principles thus explained. In each of the cases the mistake is, that the holder of the bill has lost sight of one or other of the principles.

Take the cases in their order.

1. **Correction of first mistake.**—The holder of the bill has registered the protest, and taken out the writ of execution to which he is entitled on registration; but, he has not executed the writ. It is quite plain what is the blunder here. The "diligence" has been "raised" but not "executed;" and by the statute, both the raising and the execution are required.

What the holder should always do is, to cause the writ of execution to be put in force; although it is quite enough if he takes merely the first step in the process, which consists in what the Scottish law calls "giving a charge" to the debtor; that is, it consists in serving the writ upon the debtor, by a proper officer of court, who at the same time calls on him to pay the bill within a certain short time, and warns him, that failing payment, the writ may then be put to further execution, by seizure of his person or his goods.

2. **Correction of second mistake.**—The holder has thought himself safe, because the debtor has endeavoured to stay execution upon the bill by the action called suspension. The law holds this insufficient to interrupt prescription; because the suspension is not an action raised upon the bill; it is not an action raised by the creditor in the bill.

The holder should here, as in the former case, take the first step for putting his writ in execution, by "giving a charge" to the debtor.

3. **Correction of the third mistake.**—The holder has claimed payment of the bill under a private trust. This claim is not an action, it is not a judicial step; which the law can recognise as an action. However, it has been held, that where, in the course of such a trust, the debt has been recognised, the bill has been effectually protected from prescription.

This, therefore, suggests one way of saving a bill. Let the holder, if possible, obtain a decision of the trustee recognising the debt. Since, however, this is not always in the creditor's power, his safer policy is to follow the same course as in the other cases, and to put his writ in execution by giving a charge.

It has been seen, therefore, that one remedy (the putting the writ of execution in force) is effectual in all the cases enumerated. It will be equally effectual in any others that can occur.

It will now be shown what remedies are open to the creditor when he has neglected the proper

means, and allowed his bill to suffer the prescription.

#### IV. RIGHTS OF CREDITORS IN PRESCRIBED BILLS, AND MEANS STILL OPEN FOR ESTABLISHING THEIR CLAIMS.

It has been explained, 1st, that a Scottish bill of exchange is extinguished by prescription or limitation six years after the date at which payment is exigible, unless proper means be taken to protect it from the prescription; 2ndly, that certain means are not sufficient to protect the bill; 3rdly, that certain other means are sufficient and effectual.

It remains to show, in the 4th place, what is the position of the holder of the bill, when by neglecting the only proper means, he has allowed the prescription to be incurred. His claim on the debtors in the bill is not necessarily at an end, but he is seriously narrowed in his means of making it good.

1. *Debts subsisting how to be proved.*—The effect of prescription or limitation is, that the bill is extinct as a ground of action or execution; but that the debt is left unaffected. In other words, the debt may be proved, but must be proved by other evidence than the bill. It must be proved in terms of the statute, by the oath or writing of the debtor. The creditor must prove by the oath or writing of the debtor or his representatives, first, that the debt has been constituted; secondly, that it is still owing.

2. *Action at law is necessary.*—The proof of these two facts must be offered in an action at law, brought for the purpose of establishing the debt. There is no possible way of making effectual that right of immediate execution against the debtor which has belonged to the bill during the six years of its subsistence. That right has perished with the bill on which it was founded.

3. *Proof dated within the six years.*—The proof, if within the six years, must amount to an acknowledgment of the debt, superseding the bill; it must amount to such an acknowledgment as forms in itself a distinct and independent obligation; in which case, the bill not being the foundation of the obligation, the sexennial prescription does not affect it, and has nothing to do with it. Any thing short of such an acknowledgment of a separate obligation is insufficient. Thus, for example, payment of interest within the six years, or of part of the principal sum in the bill, is not enough: such payment, or anything bearing reference to the bill, does not remove the presumption established by the statute, from the mere lapse of the six years, that the debt contained in the bill has been paid.

4. *Proof dated after the six years.*—If the proof offered be subsequent to the six years, it is held sufficient that the acknowledgment shall refer to the bill, and recognise the debt as subsisting. Such an acknowledgment is held to raise a new presumption against the debtor, which he must remove by showing that the debt has been paid. This effect has been allowed accordingly to markings of interest made

after the lapse of six years, in the debtor's handwriting; to similar markings of partial payments to account of the principal, made and entered after the lapse of the six years; and to a letter written by a debtor to the creditor after the six years, requesting him to send a copy of the bill, and the payments marked on the back of it, so that he might settle the balance. Markings of interest by the debtor's factor will have no effect; but entries of such payments made in the debtor's books by his clerk have been held sufficient, the debtor's books being properly his writing, whether kept by himself or by a person acting under him.

5. *Position of creditor who has proved the debt.*—If the creditor has been successful in proving the debt in his action brought after the six years, the principal points in his position are these:—First, that debtor only is bound whose writing or oath has been obtained: neither the writing nor the oath of one party to a bill can prove the subsistence of the debt against other parties. This point, by the way, seems to have been ruled differently in England; but the Scottish law is as here stated. Secondly, the privilege of summary execution originally attached to the bill does not revive in consequence of the acknowledgment of the debt: even though the holder of the bill should have duly registered the protest, the warrant thus obtained does not avail him: he must prosecute his action to a judgment, and obtain on that judgment a warrant for execution. Thirdly, the debt, when re-established by a judgment in the action, is restored, not as if the bill were re-established, to run another course of six years, but as a debt subject to the general Scottish law of the long prescription; that is, the debt will not now suffer prescription till the lapse of forty years.

#### NOTICES OF NEW BOOKS.

*A Collection of the Special Acts authorising the Construction of Railways, passed in 8 & 9 Vict.; with Tabular Abstract, Introduction, and Index. In Two Volumes. Westminster: James Bigg and Son.*

THIS is a very useful collection of the Special Railway Acts, and particularly appropriate in its time of publication. One hundred and twenty railway acts passed last session, which the compiler, Mr. James Biggs, classifies in the following manner:—

“Fifty-eight acts authorise the incorporation of companies with power to construct lines of railway; of this number twenty-six companies are so connected with companies previously incorporated, that the lines authorised by their acts may be considered more as extensions of existing railways, than as new lines; the companies incorporated by the remaining thirty-two acts, may be considered as independent of

existing companies, and the lines authorised by their acts as new railways.

"Forty-seven acts authorise the construction of branches or extensions of existing railways by companies previously incorporated, and

"Fifteen acts are for the raising of additional capital, the amalgamation or leasing of lines, or otherwise amending the provisions of former acts, without authorising the construction of any new railway or branch."

The introduction to the work contains some just and valuable observations on the defective structure of these acts, viz., on their want of *accuracy*; on their want of *uniformity*; and on the want of due *responsibility*. These remarks are followed by practical suggestions for securing uniformity, as well with respect to bills now before parliament as to bills in subsequent sessions.

The compiler then gives a list of the 129 statutes, and sets them out nearly verbatim: they occupy 1144 pages. Useful indices are added, containing—1. The names of companies, commissioners, trustees, and other public bodies. 2. Names of directors. 3. Names of landowners. 4. Names of places. 5. Index to subjects.

We pass over the instances of *inaccuracy*:—such as making in the title the termini appear to be from a certain point to the same place; holders of one hundred shares to vote for *two hundred*; and prescribing one limit in the number of directors and authorising the appointment of another.

It appears that these acts are on almost every important point at variance in arrangement, language, and substance. Mr. Bigg, amongst numerous others, specifies the following examples of *want of uniformity*:—

"The shares into which the respective capitals are divided, vary in amount from 10*l.* to 50*l.* for each share.

"The amount of any one call which may be made on the shares, varies from 2*l.* to 10*l.* per share.

"The interval to elapse between successive calls, varies from one month to four months.

"The power to raise, by loan or mortgage, the amount of one-third of the capital is always taken by the company, but in many acts the power to creditors to enforce repayment of the sums lent to the company by the appointment of a receiver is altogether omitted; and where that power is given, the amount owing to creditors by whom application must be made, is in some instances so large as to render to creditors every little facility.

"The tabular abstract in the column headed 'Appointment of Receiver,' contains a state-

ment of the amount owing to creditors, on whose application the appointment of a receiver may be made; where no amount is stated, the creditors of such company are not empowered to require a receiver to be appointed.

"In cases where this power is given, the prescribed amount varies from 3,000*l.* to 100,000*l.*, but the want of uniformity on this important point will be better seen by reference to the acts relating to the Midland Great Western of Ireland and the Trent Valley Railway Companies. The first named company is empowered to borrow the sum of 333,000*l.*, and creditors to the amount of 3,000*l.* may require the appointment of a receiver: the last named company is empowered to borrow the sum of 416,000*l.*; and a receiver cannot be appointed unless the sum owing to creditors, by whom the application is made, amounts to 100,000*l.*

"The number of directors prescribed by the special acts, varies from five to twenty-one.

"The qualification of a director varies from ten shares to fifty shares.

"The quorum of a meeting of directors varies from three to five.

The directors of the Newry and Enniskillen railway are empowered to vote either personally or by *proxy*.

"The 'Companies Clauses Consolidation Act' requires, that the first general meeting of the shareholders of a company shall be held within the prescribed time, or if no time be prescribed, within one month after the passing of the special act; and that the future general meetings be held at the prescribed periods; and if no periods be prescribed, in the months of February and August in each year.

"The period for holding the first meetings of companies prescribed by their special acts, varies from one month to six months.

"The months in which the subsequent ordinary meetings are to be held are stated in the tabular abstract.

"The 'Companies Clauses Consolidation Act' requires, in order to constitute a meeting, that there shall be present, either personally or by *proxy*, the prescribed quorum; and if no quorum be prescribed, then shareholders holding in the aggregate not less than one-twentieth of the capital of the company.

"The quorum prescribed by the special acts is shareholders holding capital varying from 2,000*l.* to 50,000*l.*

"The 'Companies Clauses Consolidation Act,' enacts, that the prescribed number of shareholders, holding in the aggregate, shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, that twenty or more shareholders, holding in the aggregate not less than one-tenth of the capital of the company may, at any time by writing under their hands, require the directors to call an extraordinary meeting of the company.

"The number of shareholders required by the special acts to convene an extraordinary meeting, varies from five to thirty, and the amount of capital varies from 2,500*l.* to 60,000*l.*

"The right of voting is a subject upon which the provisions of the special acts are essentially at variance."

On the power of taking additional lands, compulsory purchase, the completion of the works and the maximum of charges, the compiler thus observes:—

"The quantity of additional lands, authorised by the special acts to be taken for extraordinary purposes, varies from 10 acres to 200 acres;

"The time limited for the compulsory purchase of lands, varies from one year to five years.

"The time prescribed by the special acts for the completion of the works thereby authorised, varies from three years to seven years.

"The maximum rates of charge, authorised by the special acts to be taken for the conveyance of animals, goods, and passengers, cannot be regarded as a matter solely affecting the interests of the companies incorporated by these acts, but is, to all intents and purposes, a most important public question.

"Upon this point, Mr. Laing states in his 'Report on the Statistics of British and Foreign Railways,' dated January, 1844, that 'railway companies may be taken for all practical purposes to possess a complete monopoly as far as regards the conveyance of passengers;' that the parliamentary maximum is always so high as to exceed the limit which self-interest alone would dictate; and 'that it has never had any practical operation.'

"The same report also states, that 'on comparing the scale of fares charged upon the railways of this country with those of France, Belgium, Germany, and other countries on the continent, it appears impossible to avoid the conclusion that England, which has hitherto enjoyed a great superiority over all other European nations, will shortly be placed at a great disadvantage, owing to the high tariff of fares upon her railways. This disadvantage is at least equivalent to a tax of from 80 to 100 per cent. on the upper and middle classes of travellers, while the poorer classes have, in the most favourable cases, to pay from 50 to 100 per cent. more for worse accommodation.

"Mr. Laing's report was published two years since, but his observations are perfectly applicable to the present time, and the same view of the question is taken by Mr. Morrison, M.P., who in a pamphlet recently published observes, 'The rates of charge of the English railways are practically unlimited, that is, the companies are in every instance left at liberty to charge as high a rate on every part of their traffic as they have ever thought, or are likely to think, for their own advantage; and the consequence is, that on all the English railways, excepting a very small number of lines placed under peculiar circumstances, the charges are much higher than the French maximum rates.'

Again, as to the weight of luggage allowed to be taken by passengers. This,—

"Varies in the case of first class passengers from 100 pounds to 150 pounds; in the case of second class passenger, from 60 pounds to 100 pounds; and in the case of third class passengers, varies from 40 pounds to 100 pounds.

"In six instances the luggage allowed to passengers is limited in dimensions as well as in weight.

"In four acts there is a provision which it would be desirable to have more generally adopted, viz, that passengers' luggage shall be conveyed at the risk of the company upon the payment of a sum not exceeding 2d. for each parcel.

Then comes the question, *Who is responsible for all this blundering legislation?*

The solicitors and parliamentary agents escape from it on the following grounds:—

"The solicitors are not responsible, as in the preparation of railway bills a great deal is necessarily left to their discretion; but a clamour is pressed upon them against their will by parties whom they are extremely desirous of obliging; and they appeal to the knowledge of honourable members, 'that in the last few months they really have not had a fair chance in doing this business, on account of the pressure there has been upon them.'

"The agents are not responsible. A gentleman, who had 100 bills under his charge, stated to the committee on positions that *as a rule* he certainly should not conceive, in advising upon the insertion or non-insertion of clauses, that it could be absolutely responsible to the House or to any other persons, for those clauses, whether right or wrong, if it is in the discretion of parliament, after those clauses have been dealt with by them, and they think fit, and it happens that, in a great proportion of the bills which are introduced, I should give an opinion in individual opinion against clauses which, nevertheless, are insisted upon being inserted, and are inserted.

The remedy, as Mr. Biggs suggests, can alone be found in the establishment of general rules applicable to all bills of this nature; and we trust parliament will be induced to consider the suggestions offered in the work before us, and in the pamphlet of Mr. Morrison and by other writers on the subject.

*A Treatise on the Liability of a Subscriber to a Railway Company, as incurred by signing the Parliamentary Contract, With Forms of a Subscribers and a Parliamentary Contract, and an Outline of the Law thereon.* By THOMAS F. B. TERRELL, Esq., of the Inner Temple, Barrister at Law, London, Sweet's, Chancery Lane, 1846. Pp. 62.

These little works treat of the following subjects—

1. Origin of parliamentary contract. 2. Mode of dissolution of liability. 3. Dissolution of company without act. 4. Liability after act. 5. Effect of Companies Clauses Consolidation Act. 6. Obligation arising from application for grant of allotment of shares. 7. Legality of transfer before act. 8. Right of transfer. 9. Liability after transfer. 10. Refusal of directors to register transfer of scrip. 11. Refusal of holder of scrip to register.

From Mr. Terrell's general summary, in which he states the result of his views, we extract the following:—

"That the application for, and the allotment of shares, imposes a liability to the payment of all the calls of the company after an act is obtained, unless availed by a transfer, in conformity with the Companies Clauses Consolidation Act.

"That, after such application and allotment, and *a fortiori* after signature of the parliamentary contract, the subscriber cannot, before an act is obtained, withdraw himself from these liabilities without the consent of all the subscribers.

"That, after an act is obtained, the directors of the company will be at liberty to register the scrip-holders as shareholders, and in that case that all liability on the part of an original subscriber, who has transferred his shares before such registration ceases.

"That on a refusal of the directors to register the scrip-holder, the original subscriber may cause himself to be registered, and immediately transfer all interest in, and liability to, the company to the scrip-holder.

"That on a refusal of the scrip-holder to register as shareholder, the original subscriber may, if he can procure the consent of the directors, without production of the scrip, register himself, and transfer his shares to any third person whom he may think proper.

"That on a refusal of the directors to register the original subscriber, without the production of his scrip, whether a notice to the directors of an application by the original subscriber to the scrip-holder to come in and register, and of his refusal, will protect the original subscriber from further liability, is a question which remains to be decided.

"An extreme vigilance on the part of parliament to authorize the construction of no lines but such as must unquestionably be remunerative and maintain with the public the credit of profitable speculations, will render the foregoing inquiries, so far as they are found as a supposed depreciation in the price of shares, of no practical consequence. Failing that vigilance, it is indispensable, if only for the protection of the owners of landed property, that some further guarantee should be required for the due performance of railway undertakings, and that the

powers of inflicting private inconvenience which such acts confer, should be withheld until it is clear beyond the possibility of evasion, that the means will be forthcoming of effecting that public benefit which is their only apology."

An appendix to the work comprises, 1st, so much of the Companies Clauses Consolidation Act of 1845, as appears requisite to illustrate the observations of Mr. Terrell. 2nd, Observations on the form of the subscribers' contract and the parliamentary contract. 3rd, Form of subscribers' contract. 4th, Form of parliamentary contract.

## NEW BILLS IN PARLIAMENT.

### COUNTY ELECTIONS.

THIS is a bill to limit the time of taking the poll in counties at contested elections of members to serve in parliament to one day. It recites, that it is expedient that the time of taking the poll at contested elections of knights of the shire be limited to one day; and proposes to enact,

1. That at any contested election of a knight or knights to serve in parliament for any county, or for any riding, parts, or division of a county, the poll shall be kept open during one day only; (any law or statute to the contrary notwithstanding); and such poll shall commence at eight of the clock in the forenoon of the third day after the day fixed for the election of each knight or knights, and the polling shall continue during such day only, and no poll shall be kept open later than four of the clock in the afternoon.

2. That if such third day after the day of election be Sunday, Good Friday, or Christmas-day, then the poll shall take place on the day next following such Sunday, Good Friday, or Christmas-day; and if Christmas-day fall on a Saturday, then on the Monday following.

3. That this act shall not extend to Ireland.

## COMMONS INCLOSURE COMMISSION.

### REPORT OF THE COMMISSIONERS.

To the Right Honourable the Secretary of State for the Home Department.

WE have the honour to forward to you, as one of Her Majesty's Principal Secretaries of State, pursuant to the provisions of the act passed in the 8th & 9th years of the reign of her present Majesty, cap. 118, a general report of our proceedings, specifying such matters as are thereby directed; which report contains a schedule, as a form most easy of reference, by which will be seen the time each inclosure proceeding has occupied in its several stages, which has necessarily varied according to the circumstance of the different cases. The number of



applications of all kinds to this office has been 42, of which 42 have been for inclosures; of these, 31 we are led to believe will require the previous authority of parliament, and 11 will not. There is one for the conversion of stinted into regulated pasture, one for the exchange of lands, and two to complete proceedings under local acts. 26, 271A. 1A. 22P. is the quantity of land comprised in the applications exclusively of those relating to local acts and exchange.

Our report of any opinion as to the expediency or inexpediency of inclosure is necessarily confined to those cases with respect to which the proper assents have been given to the provisional order. We have in the schedule given precedence to all those cases which it is confidently expected will require the previous authority of parliament; of these, taking first such as fall under the 14th section of the act, in the order observed therein, and followed with those cases which do not require the previous authority of parliament. In addition to this general statement in the schedule, we proceed now to report specially on these cases. (Nos. (1) to No. (7) inclusive) requiring the previous assents to the provisional orders have been given; the special grounds on which we think such inclosures expedient, and in those cases where no allotments are made for exercise and recreation or for the labouring poor, the grounds on which we have abstained from requiring such appropriation; and afterwards on case No. (8), which does not require the previous authority of parliament, and the grounds on which we think such inclosure expedient.

An application has been made for the inclosure of Milton Common Fields, containing 2,090 acres, of which part is waste of a manor on which the tenants have rights of common. We consider this inclosure expedient on the grounds that the open arable land will be doubled in value by allotting, inclosing, and draining it, and the meadows and commons in a still greater degree, the population fully employed; and besides the village green of six acres being allotted for exercise and recreation, 18 acres are allotted for the labouring poor, which, under the circumstances of this case, will be most beneficial to them.

Also for the inclosure of Worsthorne Common, containing 2,425 acres, on which rights are exercised at all times of the year, not being limited by number or stint. We consider this proposed inclosure expedient on the grounds that the value of the land will be increased by drainage and proper cultivation in a fourfold degree, and very great additional employment will be given to the population; that in addition to allotments for labouring poor, the village green, which is surrounded by cottages, and in a miserable and dirty state, will be allotted to the churchwardens and overseers, improved, and kept in order.

Also for the inclosure of Newton Commons, containing 260 acres waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the

ground that the land is at present of very little value, but capable of very great improvement, and that it will lead to much increased employment of labour. In this case there is an allotment for labouring poor, which is desirable, as they are badly off for gardens; but we have not thought it expedient to allot any portion for exercise and recreation, on the ground that the land, from its locality, is ill suited for that purpose, and such alone as could be made use of, is in strips and unfit for it, but of considerable importance to the farm-houses, as being calculated to form homesteads for them.

Also for the inclosure of Instow Marsh, 59A. Or. 18P., waste of a manor on which the tenants have rights of common. We think this inclosure expedient on the ground that the land will be greatly improved, especially by drainage, and that the old inclosed land, which also is in a wet state, will derive the benefit of the out fall into the river Taw, which is secured by the provisional order, and that it will lead to an useful application of capital and labour.

Also for the inclosure of Areley Common, 59A. 3R. 14P., waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the ground that the land is now almost wholly unproductive, but susceptible of great improvement, and that it will benefit all classes. The allotment in this case of five acres to the labouring poor is made with a view to an exchange of part of it for land near the dwellings of a portion of the labouring poor, who reside chiefly in two different places.

Also for the inclosure of Salecombe Hill and Northern Hill, 209A. 3R. 12P., waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the grounds that the land is at present in a most neglected and unproductive state, though, for the most part, capable of being made as good as the old inclosures adjoining, and would lead to a very useful application of labour and capital.

Also for the inclosure of Corley Moor, containing 50A. 2R. 15P., waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the grounds that by drainage and cultivation the productive powers of the land would be much increased and all parties benefited. In this case no allotment for exercise and recreation, nor for the labouring poor, is required by the provisional order. Our reasons for this are, that there is no part of the land convenient for exercise and recreation, whilst there are above two acres of land left untouched by this inclosure admirably adapted for this purpose, and because the poor, who live where they could reap benefit from garden allotments, are in possession of large gardens and other inclosures, originally, as it appears, a part of the common.

And application has also been made for the inclosure of Mathwold and Southey Commons, containing 135 acres, which does not require the previous authority of parliament. In this

case a notice was issued on the 27th of January instant, that we intended to authorize the inclosure. We are of opinion that this proposed inclosure is expedient on the grounds that the land would be greatly improved, a proper road to it insured, and that it will afford profitable employment to the owners, who are chiefly labourers, and who are anxious for it.

We have, in accordance with that which we conceived to be the spirit of the act, by inviting the parties interested to avail themselves on all occasions of the assistance of this office, endeavoured to carry on the proceedings of each proposed inclosure at the least possible expense, and with as little delay as has been compatible with the proper conduct of each case, and due regard to all rights, however small they may have been.

As regards the allotments for exercise and recreation, and for the labouring poor, inasmuch as the Inclosure Act requires, as to certain descriptions of land, that when allotments for such purposes are not to be made, the inclosure commissioners should state specifically their reasons for such a course being adopted, we conceived that the intentions of the legislature could only be carried out in their true spirit, by making generally such allotments a condition of the inclosure of land liable to such condition. We have, therefore, unless some cogent reason has been shown for a departure from the rule, caused allotments to be set out for these purposes in the various cases of such inclosures, with respect to which a provisional order has been issued; and we have, in adopting such rule, in some cases where the land does not appear convenient for such purpose, taken into our consideration the probability of such allotment being exchanged for inclosed land more appropriate; as, if the inclosure had been permitted to proceed without any provision for recreation or garden ground, the opportunity for such provision would have passed away. In some of these cases, there has been, in the first instance, an objection on the part of those interested in the land to the apportionment of any part of it for such purposes, they considering it unnecessary; we have, however, the satisfaction to state, that in every such case, on farther communication and fuller explanation, the views as we believe of the legislature have been acquiesced in by those who had before seen them in a different light, and in a spirit which leads us to hope that, when the provisions relating to this matter, and the grounds of them are perfectly understood, no reasonable proposition will meet with opposition.

The short time which has elapsed since the passing of the act, and the ignorance as to its existence on the part of some, a misapprehension as to its provisions, and of the expenses attending inclosures under it, with regard to others, have, we doubt not, limited the number of cases to those on which we have now to report; but as we find in these among the applicants for inclosure, persons of all classes, and enjoying a very disproportionate amount of interest, and in some cases, to which the assents have been given, the rights chiefly enjoyed by la-

bourers, and in addition to this, that there is no case yet, as we have reason to believe, which will be abandoned for the want of the necessary assents to the provisional order, our conviction is, that the country will generally avail itself of the provisions of the act; and that conviction is confirmed by the spirit in which we have been met by those interested in the different cases of inclosure with which we have had to deal, even on those occasions when it became necessary to discuss points of difference, and to decide against the opinion of those with whom such discussion had taken place.

As far as we have been able to judge, from the limited experience afforded us, we find the machinery of the act generally adequate to carry out its objects, except where a question arises, Whether the soil, or a portion thereof, is not in the lord of the manor? or where the manor is claimed by adverse parties; and we would further observe, that when, according to the provisions of the act, the allotment to the lord is set forth in the provisional order, which, by information subsequent to the assents, is shown to have been improperly done, or should a claim as lord be advanced at this late period, and be substantiated, inasmuch as the inclosure commissioners have no power to issue a supplemental provisional order, they are not aware how that which may afterwards turn out to be an error in the provisional order can be remedied; which error was on their part inevitable, as, on the facts disclosed upon an investigation as complete as was possible, the provisional order was correct; nor are they aware how an inclosure, where such mistake has occurred, can proceed without a fresh application, entailing an additional expense on the parties interested; and the same inconvenience may arise where other claims are unexpectedly shown to exist at an equally late period.

Note.—We are not in a condition to state, with any great degree of accuracy, the expenses which will be incurred in respect of inclosures generally with which we are now proceeding up to the time, and inclusive of the proper assents being given to the provisional order; and it is probable that the cost of each to which such assents have already been given, may not be a just criterion of other cases, as we have been enabled, with one exception, where it was occasioned by the request of the parties interested, to obtain the assents without employment of an Assistant-Commissioner for the purpose, and in a manner perfectly satisfactory. The average of each proceeding in which these assents have been given, as far as this office is concerned, will be about 16*l*., up to the time of the return of such assents to us, which leaves the case ready either for parliament to deal with, or for us to signify our intention of authorizing the inclosure.

[The Schedule follow this Report.]

(Signed)

LINCOLN.

W. BLAIR.

G. DARBY.

Inclosure Commission Office,

[No. 5, New Street, Spring Gardens,]

31st Jan. 1846.

## THE EXPENSES OF CORONERS.

THE conduct pursued by the justices of the county of Devon, has produced a considerable sensation among the coroners of that county. It would seem that in instances where inquests have been held, and verdicts of "Natural Death," or "Died by the visitation of God," have been returned, the justices in quarter sessions assembled have refused to allow the fees and expenses of the inquests, on the ground that such inquests were unnecessary.

The coroners contend that the justices are thereby making what amounts to an *ex post facto* law, because it is not until the inquest has been held that such a decision can be come to; nor is it possible for a coroner to anticipate what the verdict will be until the facts, upon oath come before him; he cannot make a previous inquiry, because of whom is he to inquire? It is reported to him that there has been a sudden death, and, according to the common law, he is bound to make inquiry as to the cause of the death. "The office of coroner is an ancient," says Judge Doddridge, (3 *Bulstrode*, 176,) "that its commencement is unknown, but the duties of the office seem to have been well defined and understood in the time of Bracton, who writes, 'That without delay, upon sudden death, the coroner do inquire' and the statute 4 Edward 1, *De officio coronatoribus*, is directory, and by the stat. 3 Henry 7, c. 1, the coroner is to forfeit 100s. if he be remiss and make not inquisition upon the view of the body dead."

The registrar-general of births and deaths, in his report for 1841, says, "That the coroner's inquest, from its popular nature, has contributed not only to the detection and repression of crime, but to the general abhorrence of assassination and the tender regard for human life which pervade the minds of the people of this country; and he says, in 1845, "Inquests are held in the cases of sudden as well as violent deaths."

But Lord Denman's *dictum*, in the case of *The Queen v. The Great Western Railway Company*, has been seized upon by the justices of Devon. His lordship in that case is reported to have said, "If the verdict be 'Death by the visitation of God' nothing more is done, for, in truth, it appears that there was no occasion for an inquest."

The preliminary step, in order to punish crime, is the inquiry and commitment by a magistrate of the supposed offender, and yet no fault is found with that magistrate, although the party is subsequently acquitted. He had information that a crime had been committed, and he was called upon to institute an inquiry. The coroner has information brought to him; he is bound to institute an inquiry. If it should appear that the death should have been caused by violence he is paid his fees, but if it should turn out that the party, although dying suddenly, died from natural causes, his expenses are withheld; thus giving a power to the

justices over the coroner which they ought not to possess. If the magistrate cannot deprive a prosecutor of his expenses because a prisoner has been acquitted.

The justices of Devon came to this conclusion, "That the committee of accounts be instructed not to pass the expenses of any inquest where the verdict is 'Natural death, or visitation of God,' unless reasons are shown that such suspicion fairly arose; that such death was not natural." How can this be ascertained without inquiry, and how is this inquiry to be carried on but by the means pointed out by the law? At the Midsummer Sessions of 1845, the expenses of several inquests were disallowed. One of them was an inquest held upon the body of an old man of 74 years of age, who was last seen alive on the evening of the 10th June, and was found dead the next afternoon in an outhouse; and yet it was held by the justices that this was not a fit subject for an inquest. Another instance was, that of information being conveyed to a coroner that a child had been found dead in its mother's bed; the informant could not say whether it had been overboard, or smothered, or had died from natural cause. The coroner thought it his duty to hold an inquest, the matter was inquired into, and the jury returned a verdict of "natural death." The justices refused to allow any of the expenses of that inquest. If such proceedings are to be sanctioned, how can a coroner act? A mother of an illegitimate child has only in future to smother the child instead of crying in throat, and she can ride off with impunity.

[From *The Times* of 27th March, 1846.]

## DUBLIN LAW INSTITUTE.

NOTICE.

WE are glad to notice the exertions of this society in promoting an improved system of legal education. Mr. Peisheim Kennedy, the principal, is entitled to the thanks of the profession for his perseverance in this good time.

ANNUAL PRIZE ESSAY.

Trinity Term, 1846.

A copy of Saunders's Reports, now edited or such other work as the successful candidate may select, equal in value, will be given to the most approved original essay which shall be delivered to the secretary of the Institute before the 25th of May, 1846, in the society and advantages of an enlightened system of legal education as affecting the social improvement of the country. The successful candidate to be eligible to election an honorary associate of the Institute. The society to have the power of reading at any of their own meetings, and of publishing amongst their papers of the law institute, such of the essays as the society may approve of, or portions of the same; but the authors name, if communicated to the society, not to be published without his consent and signature. The competitors are requested not to make

## ANNUAL EXAMINATIONS.

EXAMINER

## RECENT DECISIONS IN THE SUPREME COURT.

**REPORTED BY BARRISTERS OF THE SEVERAL**

Lord Chancellor.

**SOLICITOR.—PRIVILEGED COMMUNICATION.**  
 AND TO EMPLOYERS OF AGENTS OF INSURANCE COMPANIES.  
 No person shall demand or interrogatories, re-  
 sponding to the same, or bidding; and other  
 questions of the nature and value of prop-  
 erty sold by him for his client, and com-  
 munications from the latter to him through  
 an agent are privileged.

THIS was an appeal from the Master of the Rolls. The defendant some years since conveyed an estate to the plaintiff in consideration of an annuity. The plaintiff recently filed a bill to rectify an alleged miscalculation in the value of the annuity, and during the proceedings admitted certain admissions to the solicitor who had transmitted the purchase on behalf of the defendant, appearing the object of the bidding intended to have been reserved in case the property had been sold by public auction, as at one time was contemplated. The witness refused to state. In the treaty between the plaintiff and the defendant, the latter negotiated occasionally with her solicitor through her brother, to the bill stated that the brother was the defendant's agent, which was denied by him, and on which he was represented to have been merely the channel of communication between the defendant and her solicitor.

Mr. James Parker and Mr. Stevens contended, that the information required did not relate to the professional business of a solicitor, but belonged rather to that of an auctioneer or estate agent, and that consequently the privilege of communication between solicitor and client could not be claimed. That such communication relating to matters not coming within the peculiar province of a solicitor, having been made to him through a third party, the privilege would not arise. That the solicitor should have sworn that he was the agent of the defendant; whereas in his reply to the seventh interrogatory, he merely stated that he believed himself to have been such agent.

*Walker v. Wildman*, 6 Madd. 47. That at all events the interrogatories should have been answered, and the court might, if it thought fit, reject the answers at the hearing, as in *Desborough v. Rawlins and others*, 3 Myl. & Cr. 515. The following cases were also cited: *Brumwell v. Lucas*, 2 Barn. & Cres. 743. [His lordship remarked, that this last case had never been sanctioned.] *Sawyer v. Birchmore*, 3 Myl. & Keen, 572; *Spenceley v. Schickelbury*, (therein cited), 7 East, 437; *Greenough v. Gaskell*, 1 Myl. & Keen, 98; *Parkhurst v. Lowrey*, 2 Swans. 194; *Bundy v. Bundy*, 2 Beav. 173; *Herring v. Cloberry*, 1 Phil. 91.

...Mr. Mains and Mr. Baggatly for the defendant maintained, that the privilege was that of the client and not of the solicitor. That the matters interrogated to were connected with the professional business of a solicitor, and that the privilege was not removed by the intervention of a third party. They rested their argument upon the authority of the above cases, and cited *Jones v. Pugh*, 1 Phil. 96.

"Mr. Curns appeared for the solicitor.

Mr. J. Parker replied.

*Lord Chancellor:* 'The extent to which communications between solicitors and clients are privileged is a question of great nicety. The present case comes clearly within the rule, otherwise it would be impossible for a solicitor in his ordinary transactions to steer clear of the matters which might arise. His Lordship came to this conclusion upon consideration of the whole of the transactions relating to the sale of the property and the application of the purchase money; and was of opinion, from a long professional experience, that this business was included in the ordinary avocation of a solicitor; consequently all communications respecting it were privileged. The point then remaining for discussion was, whether this privilege was obtained by corresponding through an agent. The case of *Walker v. Wildman*, (*supra*), decided the contrary. It was quite clear that

communications made by a client through an agent were the communications of the client, and as such, were in this instance privileged. His lordship would not give an opinion as to what might have been the result if the interrogatories had been put to the agent.

Appeal dismissed with costs.

*Carymael v. Powis.* March 25th, 1846.

#### Vice-Chancellor of England.

##### ABATEMENT.—REVIVOR.—COSTS.

*A suit abated by the death of a party cannot be revived for the recovery of costs alone, if they have not been taxed previous to the abatement.*

In November last the bill in this cause was dismissed with costs, but previous to the costs being taxed the party entitled to receive them died, whereupon a bill of revivor was filed by his personal representative for the purpose of obtaining payment of them. To this bill a plea had been put in, which now came on for argument.

Mr. Bethell and Mr. Henthfield, in support of the plea, contended that it had long been the settled practice of the court not to allow a bill of revivor to be filed for costs alone, unless in certain excepted cases, as where they have been taxed, or have been ordered to be paid out of a particular fund, or where they were given as part of the general relief, or where the report had been settled by the Master, but the report had not been signed. They cited *Jupp v. Goring*, 5 Mad. 376; *White v. Heywood*, 2 Ves. S. 461; *Hall v. Smith*, 1 Bro. C. C. 438.

The practice was analogous to that at law, where it had been held that an execution for costs alone before final judgment could not be sustained.

Mr. Jas. Parker and Mr. Goodson, contra, cited *Morgan v. Scudamore*, 3 Ves. 195.

The Vice-Chancellor said, that ever since the time of Lord Camden the rule of the court had been, that a bill of revivor could not be filed for costs, with certain exceptions. The arguments that had been addressed to him applied more to the propriety of the rule than to the fact of its existence. This rule had come under the consideration of Lord Loughborough, Lord Manners, Lord Bathurst, and Lord Eldon, successively; and it was also laid down by Lord Roddesdale, in his *Treatise on Pleading*. In 1820, it was considered by Sir John Leach, who confirmed the previous decisions; and now, 20 years afterwards, it came before him. The practice, said his Honour, is too strongly laid down to be questioned, and the plea must therefore be allowed.

*Andrews v. Lockwood.* March 18, 1846.

##### RAILWAY DEPOSITS.—PAYMENT OF MONEY OUT OF COURT.

*On the application of the Directors of a railway company to have a sum of money deposited with the Accountant General paid*

*out of court, on the Speaker's certificate of the petition for the bill being withdrawn, the court will, at the request of the directors, order it to be paid to a third party, although the statute under which it is paid in requires it to be paid to a majority of the directors, provided the consent is duly verified.*

A petition was presented in this case by certain directors of a company, in whose names a sum of 150,000*l.* had been deposited with the Accountant General, pursuant to the standing orders of parliament, for payment to their nominee of such sum, on production of the Speaker's warrant of the petition for the bill being withdrawn.

Mr. Montague, for the petitioners, said the statute required the application to be by a majority of the directors, and contemplated only a payment to them; but the Master of the Rolls had decided that the order might be made for payment to the bankers of a company.

The Vice-Chancellor said, that if the consent of the directors to the payment to a third party were duly verified, he did not think there would be any objection to the order being so made.

*Re Sheffield Railway.* March 27, 1846.

#### Vice-Chancellor Knight Bruce.

##### SOLICITOR AND CLIENT.—LEGACY DUTY.—MORTGAGE.—SALE OF STOCK.—TRUSTEE.

*A solicitor, who, on being consulted by a very ignorant trustee, as to the payment of legacy duty, advises a sale of all the stock, (no sale having been authorised by the will,) and for that purpose, causes a power of attorney to be executed, the result of which is to give the solicitor possession of the fund, part of which he lends, or professes to lend, on mortgage, retaining the balance, or the greater portion of it for his costs and charges, ordered to show cause why he should not be struck off the roll, regard being had to the cause made by his answer, and the suit having been instituted by legatees against the trustee, and such solicitor.*

THIS was a bill filed against the sole acting executor and trustee of a will, and against the solicitor, Mr. George Price Hill, of Birmingham, by the infants interested under the will of the testator, praying that a sum of 3*l.* per cent. stock, part of the estate of the testator, in which the infant plaintiffs were interested, might be replaced. The answer of the defendant Hill, admitted the sale of the stock by his advice. By the answer and by the evidence, it appeared that the fund had not been applied according to the trusts of the will. The particular mode in which it had been dealt with, is fully stated in the judgment.

Mr. Russell and Mr. Goodson appeared for the plaintiffs.

Mr. Renshaw appeared for the defendant Gosnell, the executor, and Mr. Wigram with Mr. Rogers for the defendant, Mr. G. F. Hill.

Vice-Chancellor Bruce having sent a preliminary inquiry, for the purpose of ascertaining whether the whole class of persons was before the court, said,—“ Having thus disposed of this cause for the present, I must do more. An old man, in a lowly class of society, a Lincolnshire peasant, scarcely, or not at all, above the station of a farm labourer, happens to be a trustee under a farmer's will, of a sum of stock amounting to 650*l.*, 3 per cent. consols, for the benefit of the Goodwins, who are infants,—possibly for the benefit of unborn persons. The stock stands in the name of the testator, and is bequeathed to his sole acting executor and trustee for the benefit of the children. The bequest of the stock, for this purpose, is a specific bequest, and has been assented to. I must, upon the evidence before me, consider the trust as fixed and the fund as clear, except that the legacy duty, amounting to 1*l.* per cent., which makes the amount something less than 64*l.*, has not at this time been paid. In this state of things, the old man, the trustee, seems to have received the ordinary application from the Legacy Duty Office, as I collect, on the subject of the duty, and to have consulted Mr. Hill, a solicitor, upon it, who advises him to sell the whole of the stock. The will gave no authority for that purpose. This advice was plainly unjustifiable, and most manifestly unwarranted. Perhaps it might not have been wrong to sell, or to advise the sale of a specific part of the stock to pay the duty; but for that object, certainly not so much as 16*l.* could have been wanted. I am bound to attribute to Mr. Hill's knowledge of the title to the stock and of the circumstances, and also to knowledge of the nature of the advice he gave. I cannot upon the evidence before me ascribe to the trustee a sufficient knowledge or information to have enabled him to judge whether the advice given was right or wrong. The trustee follows the advice; Hill causes a blank power of attorney to be prepared in favour of his London agent, Mr. George Smith. It is sent down to Hill, who procures its execution by the trustee, and then sends it back to London, where Mr. Smith, (the agent,) under Hill's direction, acts upon it by selling the stock, and paying the clear proceeds, amounting to 590*l.* sterling, into the London banking house, to the credit of Mr. Hill's account with a country bank, by which the whole of the clear produce of the sale finds its way into the name and power of Mr. Hill, and, in fact, comes into his hands. It is unnecessary to characterize such a transaction. But the matter does not rest here. Mr. Hill afterwards deals with the money,—substantially at his peril,—by lending it, or representing himself to have lent it, upon some security, which would, as I collect it, have been of an unwarrantable or improper nature, even if the will had authorised the stock to be sold. He misapplies grossly, or represents himself as having himself grossly misapplied, to some other matter, the other part of the money, and claims all, or nearly all, the rest, as being due to him-

self for charges, in part at least, of an unreasonable nature, and with part of which these who were beneficially entitled to the fund could have nothing to do. His pretences and claims to be executed by the trustee, a release to him, Hill, in respect of these transactions. What would have been the right mode of viewing or dealing with conduct such as this, had the trustee been a person of education, or a man capable of protecting himself, I need not say. Upon the evidence before me, I believe that the trustee here was a helpless and ignorant instrument—a mere instrument in the hands of Hill, without any, or with scarcely more judgment or volition for any effectual or useful purpose in this matter, than the pen with which he was made to sign his name. As has been said of other persons in other instances, the regret that a professional man should have so conducted himself, is only equalled by the wonder that, as he had the means of preventing this from being brought under public observation, he should have allowed it to go forth to the world. Neither of the parties to the cause has made any application against him. I see no reason for supposing that Hill would have been unable to satisfy the pecuniary demands which the plaintiffs have upon him, had it been unnecessary that the case should have come before the court; unfortunately, however, it has come before the court. It is now before me judicially, and my understanding of the duty I owe to this profession and to society, prohibits me from treating it as not containing anything beyond a mere matter of civil litigation. If a solicitor, by his employment professionally, on the behalf of an ignorant man, and by means of the confidence reposed in him by that client, and by means of information given him by the client, is enabled to acquire, and, using those means for the purpose of acquiring, does by them acquire from the client the property of others, for whom the client is trustee, and to whom he is answerable for it,—if the solicitor thus acquires it, I do not merely say unduly or unjustly, and for an improper purpose, but in a manner which the solicitor must have known to be improper and unfair—for purposes which he must have known to be manifestly unjustifiable; if, having done so, the solicitor actually does misapply the property so unduly acquired; and if the purpose for which, and the manner in which he so misapplies it, is to any extent substantially for his own private advantage or profit; and if the client thus relying upon the solicitor, is a person by education and station so incapable of forming a correct estimate of the propriety or impropriety of the other's acts, as to be substantially a mere instrument, and a mere machine, in the solicitor's hands, used by this solicitor, as I have said,—I am not prepared to say that such a professional man ought to remain a solicitor of any court. Ascribing the act of acquiring property under such circumstances not to amount to an indictable offence, I do not see any other reason against the substantial applicability to him of a term, or terms, more ordinarily and fa-

miliarly used in jurisdictions of a different kind from this, and which I need not specifically express. Being, to my great regret, unable to say that the materials before me do not afford a probable ground for apprehending the supposed case, which I have been mentioning to be substantially a correct description of Mr. Hill's conduct in respect of the 650*l.* stock and its produce, and therefore, for questioning the propriety of the continuance of Mr. Hill as an officer of the court, I should, in my judgment, considering the nature of the case, be deserting one of the most important duties belonging to the judicial office, were I not to order, as I do, that Mr. Hill do show cause, on some future day to be now fixed, why, having regard to his answer, and to the evidence in this cause, his name should not be struck off the roll of solicitors of the Court of Chancery. If no other day is asked for, I will fix the second day of Easter Term.

*Goodman v. Gosnell.* March 8, 7, & 9, 1846. Lincoln's Inn.

### *Queen's Bench Practice Court.*

#### USE AND OCCUPATION.—YEARLY TENANCY.

*Occupation and the mere payment of an aliquot portion of an annual rent at the expiration of a quarter, is not sufficient evidence of a yearly tenancy.*

THIS was an action of assumpsit for the use and occupation of a warehouse and premises with the appurtenances, to which the defendant pleaded the general issue.

At the trial, before the undersheriff of Middlesex, it appeared that the defendant was a fringe manufacturer, and that, at Michaelmas, 1844, he had taken, for the purposes of his trade, a room in a manufactory belonging to the plaintiff, upon the understanding that the latter would remove a partition which separated the room from a granary adjoining, that he would give the defendant possession of the granary, and would make such improvements in the whole as would render it suitable for the defendant's men to work in. Before the arrangement was completed, the defendant asked the plaintiff what he would let the room for, to which the latter answered, "20*l.* a year," but that he could not let the granary also for less than "30*l.*" The defendant then said "10*l.* would not make the difference, as the room was useless without it." At Christmas, 1844, the defendant paid 7*l.* 10*s.*, the amount of a quarter's rent, at the rate of 30*l.* per annum, but it did not appear that any evidence was given showing upon what amount it was paid. Possession of the granary, however, never having been given, and the promised improvements never having been made, the defendant quitted the premises at the end of February, 1845. This action was brought for rent claimed to be due from the defendant for a quarter which elapsed after the time when he had quitted the premises, but before the expiration of a year since he had entered. A verdict was found for the plaintiff, but it did not appear how the case had been left to the jury.

*Miller* now shewed cause against a rule for setting aside the verdict, and for a new trial, contending that there was ample evidence to support the action, inasmuch as the facts inferred the existence of a yearly tenancy from the fact of occupation, and the payment of an aliquot portion of an annual rent (*Howard v. Bromley*, 1 Stark. 456; *Braithwaite v. Highcock*, 10 M. & W. 494; *Wilson v. Abbott*, 3 B. & C. 88, is distinguishable, for there it was only held that half yearly payments did not establish a tenancy for more than a year). *Lush*, contra, contended that it did not appear that there was any agreement whatever for a yearly tenancy, and that there was not one tittle of evidence to support the verdict.

*Williams, J.* My impression is still for the 7*l.* 10*s.* was not proved to have been paid on account of any rent at all, and there was no evidence to show whether it was paid on account of one, two, or twelve months. The rule must therefore be made absolute. *Rule Absolute.* *Clemmott v. Biddoe*, Hilary Term, 1846.

*Bechequer* per curiam

#### INSOLVENT.—SCHEDULE.—MISDESCRIPTION.

Where an insolvent debtor inserts in his schedule such a misdescription of a debt that it removes the creditor from a class entitled to special notice to pay, not so entitled, the insolvent is not discharged from the debt, although there has been no fraud or culpable negligence or evil intention.

*Quære, whether a misdescription of the name of a creditor not fraudulent but calculated to mislead, would prevent the defendant from being discharged from the debt.*

IN an action of debt to recover the sum of 7*l.* 15*s.*, the defendant pleaded his discharge from the cause of action under the Insolvent Debtor's Act, (1 & 2 Vict. c. 110). The plaintiff, by his replication, traversed the discharge, upon which issue was joined.

At the trial before the undersheriff of Middlesex, it appeared that the defendant had been discharged under the Insolvent Act; but the plaintiff's name was inserted in the schedule as "Mrs. Isle," instead of "Mrs. Hoyle," and the debt was stated to be 3*l.*, instead of 7*l.* 15*s.* The undersheriff left it to the jury to say whether the misdescription arose from mistake or fraud, and the jury having found that it was a mistake, a verdict was entered for the plaintiff, and liberty reserved for the defendant to move to enter a nonsuit, a rule also having been granted.

*Thomas* shewed cause, and argued, that the defendant was not discharged from the debt. In consequence of the insertion in the schedule of a debt of 3*l.* only, no notice was given by the insolvent court to the plaintiff of the defendant's application to be discharged; as required by the 71st section of the 1 & 2 Vict. c. 110, where the debt amounts to 5*l.* The 93rd section only applies to slight errors in the

schedules which have not arisen from culpable negligence or frauds. He cited *Reid v. Croft*, 11 B. & C. 369, in support of the rule. As the jury expressly found that the error arose from mistake and without fraud, the defendant is discharged from the debt. It is the duty of the insolvent court to give notice to creditors, and if the proceedings are irregular, there should be an application to the court to set them aside. He cited *Portman v. Drew*, 4 B. & C. 15; *Nias v. Nicholson*, 2 Carl. & B. 190; *Reeves v. Lymbert*, 4 B. & C. 214; *Sharpe v. Gye*, 4 Carl. & B. 411; *Jervis v. Jones*, 4 Dow. B. C. 510; *Boydell v. Champneys*, 2 M. & W. 435.

*Parke, B.*, (after stating the facts.) I regret that I should have to decide the point raised in this case, which is one of some novelty; and should have wished to have had it argued in full court; the sum in dispute, however, is so small that I am unwilling to put the parties to further expense. The description of the creditor and the amount of the debt do not seem to stand on precisely the same footing. With respect to the former, the question usually left is, whether the description is made with the intent to mislead, and would have the effect of misleading the creditor. This was done in a similar case, under the 1 Geo. 4, c. 57, s. 8, *Portman v. Drew* and *Wood v. Jones*, is a note to the same case, p. 20, and I believe has been done in other cases. Whether the defendant would be discharged, if the description, although not fraudulent, was yet such as was calculated to mislead, it is unnecessary to inquire; for my judgment does not proceed upon any misdescription of the name of the plaintiff. With respect to the description of the amount of debt, the 3rd section, corresponding with the 63rd of the 7 Geo. 4, appears to me to explain the intention of the legislature. That section provides that in cases where the amount specified is not exactly the amount of the true debt, the debtor shall be entitled to the benefit of the act, when the statement has been made without any culpable negligence, fraud, or evil intention. In *Framp-ton v. Champneys*, the Court of Queen's Bench held that the corresponding section of the 7 Geo. 4, c. 57, was incorporated in the 140th section, and consequently, if there be error answering the description of error in the 93rd section, it will not affect the discharge, unless there be culpable negligence, fraud, or evil intention. If the sum specified, instead of being not exactly the true amount, is less than half the amount, as much below the 5s. as the real debt was above it, and the difference is so great that it removes the creditor from a class entitled to special notice to one not entitled, does the section apply? It seems to me that it does not; and if there is such an error in the description, that so materially alters the condition of the creditor, the statute does not permit the adjudication to operate as a discharge, even although there may have been no fraud, culpable negligence, or evil intention. To decide otherwise

would be to deprive the words relating to this description of error of all effect. It must be presumed that the legislature used these words designedly. What the precise limit of error is, beyond which the mistake should be fatal, it may be difficult to define accurately; but there is no difficulty in saying that when the debt is by mistake removed from one class where special notice is required, the case is not within the protection, and consequently, however innocently the mistake may be made, the defendant is not to be discharged. I think the assessor was right in holding that the plaintiff was entitled to recover, although no fraud or culpable negligence or evil intention was used, and I must consider these points to have been left by him to the jury. The rule must therefore be discharged.

Rule discharged.

*Hoyle v. Blore*, (before *Parke, B.*, sitting alone.) Michaelmas Term, 1845.

### Court of Bankruptcy.

#### INACCURACY OF PETITION.

*Where it appears from an insolvent's schedule that his petition is not true in fact, such petition will be dismissed.*

*J. Smith* petitioned this court for protection from process, under the stat. 7 & 8 Vict. c. 96. The petition contained the following allegation:—"That your petitioner is desirous that his estate should be administered under the direction and the protection of this honourable court, and that he verily believes such estate is of the value of at least, unincumbered, and beyond the value of his wearing apparel, and other matter which your petitioner is authorised to except by this act, and that the same is available for the benefit of creditors." The insolvent's schedule disclosed that he had good debts owing to him to the amount of about 40*l*.

It was objected in the first instance, on behalf of a creditor, that the insertion of the word, "at least," was a deviation from the form prescribed by the act of parliament.

*Mr. Commissioner Gaultbourn* said, it had been much considered by the commissioners, how the blank left in the form of petition prescribed by the act, should be filled when the petitioner had no property available for the benefit of his creditors. It had been suggested with great force by *Mr. Commissioner Evans*, that if the blank was allowed to continue a blank, the creditors would have no security whatever that the petitioner gave up all his property, when he had any to give up. At all events, if a petitioner retained property leaving a blank in his petition for the value, he would not be indictable for perjury. The commissioners were therefore of opinion, that when the petitioner had no property, it should be so stated in his petition. Here the insertion of the word "at least" sufficiently indicated that the petitioner had no property, and the petition was in this respect sufficient.

The learned commissioner's attention was then



called to the fact, that, although the petition alleged that the petitioner's estate was of no value, his schedule, which had also been verified by affidavit, disclosed that he had good debts available for the benefit of his creditors.

The petitioner's attorney suggested, that his client believed the debts in question were good, but it was impossible to say if they could be realized.

Mr. Commissioner Goulbourn. These petitions and schedules are constantly filled up and sworn to, without the petitioner taking the trouble of perusing or considering the contents. If the petitioner has any good debts, he has some estate available for the benefit of his creditors. Either the petition or the schedule is obviously incorrect. The petition must be dismissed.

*In re Smith.* 25th March, 1846.

#### UNCERTIFICATED BANKRUPT.

*A commissioner has no authority to discharge an uncertificated bankrupt from arrest.*

The bankrupt, R. Robinson, passed his last examination, and Mr. Commissioner Shepherd appointed the 18th March for a meeting in order to hear the bankrupt's application for a certificate, and granted him a protection to that day. An announcement of the appointment to hear the bankrupt on the 18th March, on his application for a certificate, was duly transmitted to the Gazette Office, but by some accident or inadvertence at that office, the meeting was not advertised in the Gazette, and a subsequent meeting was appointed and duly advertised for the 26th March, but the bankrupt's attorney neglected to procure an extension of his protection to that day. On the 25th March the bankrupt was taken in execution outside the Bankruptcy Court, at the suit of an execution creditor who had not proved his debt, and, at his own desire, was brought before Mr. Commissioner Evans, (the commissioner of the day,) in the custody of the sheriff's officer. The foregoing facts were stated, and the commissioner was applied to, to grant a protecting order at this stage.

Mr. Commissioner Evans, after looking into the Bankrupt Acts, thought it expedient to consult his brother commissioners, and then stated that he felt he had no authority to grant the bankrupt any protection which would take him out of the custody of the sheriff's officer. The bankrupt must either apply to a judge at chambers for his discharge, or come up for his certificate next day in custody, under a commissioner's warrant.

The bankrupt then retired in custody, but was brought up next day, under a commissioner's warrant, and his certificate was granted by Mr. Commissioner Shepherd, upon which he was released from custody.

*In re Robinson.* 25th March, 1846

(Bristol District.)

INSOLVENT DEBTOR.—VEXATIOUS COSTS.

*Semble, That a debtor who vexatiously de-*

*fends an action whereby the costs are increased, and who, at the time of giving instructions to his attorney, has no reasonable prospect of being able to pay the costs incurred by the creditor; is, after judgment obtained, and on being summoned under 8 & 9 Vict. c. 127, liable to be committed under the 1st sect. of that act, for having wilfully contracted that part of the judgment debt which consisted of the costs, without reasonable prospect of being able to pay it, notwithstanding there was no evidence before the commissioner that the original debt had been improperly contracted.*

Samuel Parker, (a party resident in Gloucestershire,) was summoned to this court, under 8 & 9 Vict. c. 127, on the application of Richard Reynolds, a creditor for 32*l.* 15*s.* 6*d.*, by force of a judgment obtained in the Court of Exchequer of Pleas; the debt amounted to 15*l.*, and the taxed costs, (a trial having taken place before the sheriff of the county in consequence of the defendant pleading the general issue,) to 17*l.* 15*s.* 6*d.*

The matter came on for hearing on the 18th of March, 1846, at the Court of Bankruptcy, Bristol, before Mr. Commissioner Stevens.

Wilkes, solicitor, of Gloucester, appeared on the part of the summoning creditor, and examined the debtor, who admitted that after he had been served with the notice of declaration in the action, he took it to an attorney, and instructed him to plead, telling him at the time that he thought the creditor could not prove the debt plain against him; that at this time he knew perfectly well he owed the whole of the money, and that he had no means whatever of paying the costs which might be incurred in consequence of his pleading, if the creditor proceeded and obtained a verdict. [The writ of trial was in court to prove the plea, verdict, &c.]

Wilkes then submitted to his Honour, that the debtor had wilfully contracted that part of the judgment debt which consisted of the costs, without having reasonable prospect of being able to pay it within the meaning of the 1st section of the act in question.

His Honour observed, that he doubted whether the statute applied to the costs, but only to the contracting of the original debt.

Wilkes urged his objection, and contended that this case was analogous to the case of an insolvent applying under 7 & 8 Vict. c. 96, who, on being proved to have been guilty of a vexatious defence, was liable to have his petition dismissed for having incurred a debt (for costs) without any prospect of being able to pay it, under the 24th sect. of the act, and that the words of that section, so far as they applied to this point, and the 1st sect. of 8 & 9 Vict. c. 127, were nearly similar, and, as he submitted, quite capable of the same construction.

His Honour decided that, in his opinion, the section referred to did apply to the costs, (which formed part of the judgment debt,) and that the debtor in this case had wilfully contracted the debt for costs without reasonable prospect of being able to pay it, within the

*Reynolds v. Parker.* March 18th. 1846.

*Easter Term, 1846.*

AT WESTMINSTER.

Friday . . . . 8 Appear  
Note. Spent day at his Lord

*Note.*—Such days as his Lordship is occupied in the House of Lords excepted.

Tuesday . . . 5 } tions.  
Diss.

**Friday . . . 8 Motions.**

Wednesday April 15 Motions.

Tuesday . . . . 21 } tions, Causes, and Further Directions.

Friday. . . . 8 motions.

**Wednesday April 15. Motions and Causes.**

Wednesday . . 6) Dis.

Thursday . . . 7 { (Petition-day) Short Causes,  
Petitions, (unop<sup>d</sup>. first,) and Causes.  
Friday . . . 8 Motions and Causes.

## COMMON LAW SITTINGS.

### Queen's Bench.

For these Sittings, see p. 443, *ante*.

### Common Pleas.

*In Term.*

MIDDLESEX. LONDON.  
Wednesday . April 22 | Friday . . April 24  
Wednesday . . . 29 | Friday . . . May 1

*After Term.*

MIDDLESEX. LONDON.  
Saturday . . May 9 | Monday . . May 11

N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Monday the 11th May, in London, no causes will be tried, but the court will adjourn to a future day.

### Exchequer.

For these Sittings, see p. 444, *ante*.

## BUSINESS OF THE COURTS.

### Master of the Rolls.

DURING next term consent causes, short causes, and consent petitions will be heard on *every Saturday*, at the sitting of the court, instead of on Tuesdays as heretofore.

The general petition days in the ensuing term will be Thursday, the 16th of April, and Thursday, the 7th of May.

*Secretary's Office, Rolls, March 28, 1846.*

## PROCEEDINGS IN PARLIAMENT.

### House of Lords.

#### NEW BILLS.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—Waiting for Report of Committee. See the bill, p. 354, *ante*. Lord Dacre.

Duties of Constables, &c.—In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor. See the bill, p. 452, *ante*.

Administration of Criminal Justice. See the bill, p. 377, *ante*. Lord Denman.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, p. 472, *ante*. Lord Denman.

Real Property Burdens.—In Select Committee.

Metropolitan Buildings.—For 2nd reading. See the bill, p. 426, *ante*.

#### CHARITABLE TRUSTS.

Several further petitions have been presented praying to be heard by counsel against this bill.

We beg to refer to our observations on this measure, at p. 469, *ante*.

#### House of Commons.

#### NEW BILLS.

Roman Catholics' Relief.—In Committee. See the bill, p. 402, *ante*. Mr. Watson.

Small Debt Courts:

Somerset,  
Northampton,  
Birkenhead,  
St. Anstell. For 2nd reading.

Friendly Societies.—In Committee. Mr. T. S. Duncombe.

Poor Removal.—For 2nd reading. Sir J. Graham. See analysis of the bill, p. 473, *ante*.

Annual Indemnity.—*Passed*. Mr. Cardwell.

Highway Laws Amendment. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackinnon.

## THE EDITOR'S LETTER BOX.

WE shall next week commence the Second Part of the Analytical Digest. It will form a short series and close with the volume at the end of April. In future, each volume will comprise two Parts of the Digest, and the Table of Titles and Names of Cases will render the whole collection easily accessible. During the execution of this new plan, a farther improvement has occurred to us, which we shall probably soon carry into effect, viz., in the mode of citing the cases in the course of the argument, many of which are the result of much praiseworthy research, but do not always bear importantly on the question at issue. We shall in future, therefore, principally notice those which are adopted or quoted in the *judgment*. When a case is decided on previous authorities, they are almost uniformly mentioned by the court. This course will save considerable space, and give facility for introducing a new series of papers which we contemplate submitting to our readers at an early period.

The monthly prices of stocks shall be continued if our readers think the list useful. We had deemed it unnecessary, as the information appears in every daily paper. Our only object has been to make room for matter more valuable to legal readers, and not so easily accessible in other publications.

"A Constant Reader" will observe in the article at p. 498, *ante*, relating to the lectures at the Inns of Court, that the statement he refers to has been explained. In truth, the plan does not seem to be yet completely settled. Doubtless, the arrangements are difficult to make; and four large bodies like the Inns of Court are not easily induced to move rapidly and harmoniously; but we trust the arrangements will soon be completed.

# The Legal Observer.

SATURDAY, APRIL 11, 1846

"Quod, magis ad nos

Pertinet, et nosse malum est, agimus."

HOMER.

## LORD BROUGHAM'S NEW SHORT- FORM CONVEYANCING BILL.

THE report of the debates in the House of Lords on the 27th March, will have shown our readers that Lord Brougham has introduced a new bill designed further to promote his object of curtailing the forms of conveying landed property and granting farm leases. At the time we write, the bill has not been printed, and our observations, therefore, must be limited to the report of the speech of the noble lord on proposing the bill, — the second reading of which has been postponed till after the Easter holidays. His lordship was pleased to say that the object of the bill was to redeem a pledge he had given on a former occasion, "that the wholesome and salutary provisions of the bill of last session for simplifying the conveyance and sale of landed property should be further extended."

The profession, we believe, is not prepared to admit that the bill of last session has been either "wholesome or salutary," for, in so far as we can learn, it has not been used in more than a very few instances, and the wholesome effect of that limited use can scarcely have been ascertained. We doubt whether a single six and eight pence has been saved by its adoption; and the legal efficacy of the short form remains to be tried, for no court or jury has yet given an opinion upon any of its provisions.

"The new bill," said his lordship, "contained *formula* which would prove a great *comfort* to those who were interested in the subject, and perhaps a great *discomfort* to certain practitioners of the law; but for that he did not care: he looked to the in-

terest of the *client*, not the *solicitor*; — to the *courts* whose time would be spared, and to the *client* whose purse would be saved."

This is a well-rounded period, but, with due submission, the time of the court cannot be saved by a new form of conveyance or lease, for the old form, though lengthy, was so perfectly well understood, that its principal parts were always referred to with the greatest ease, and no question on their effect has arisen within the memory of the oldest lawyer. The new and untried form must undergo many judicial interpretations, and divers discussions will arise, before its effect can be satisfactorily and finally settled.

"It was proposed," continued his lordship, "to extend the provisions of the former bill, which applied only to the conveyance and sale [or leasing] of lands, to *mortgages, settlements, sales, and exchanges* of all sorts, to *wills and farm leases*. The expense of conveyances was one of the greatest inconveniences landed proprietors were subjected to. The committee on the exclusive burdens upon real property had collected evidence on the subject which was *quite frightful*! It was proved that the price of land where the expense of conveyance was little or nothing, (he could speak as to France, and there were witnesses who spoke as to Germany and Belgium,) was 35 and 36 years' purchase; while in one country, where the conveyance cost little or nothing, it was as much as 48 or 50 years." Here the expense of convey-

\* It cannot surely be gravely asserted that the difference between 30 years' purchase (the usual rate of land) and 50 years' is occasioned by the cheapness of the form of conveyance. There must be other elements in the computation not noticed by the learned lord.

ing an acre of land was sometimes as great as that of conveying a large estate. The saving itself would be a great boon to the landholder."

We apprehend this expectation will be disappointed. On the present system, the respectable members of the profession incur no farther expense than the circumstances justify. The disreputable will make up for the curtailment of their drafts by multiplying attendances and correspondence; they will not suffer, nor the client be benefited. And supposing the measure should seriously reduce the emoluments of the profession, the consequence will be that gradually the superior class of practitioners will withdraw, and leave the field to a less scrupulous class, with whom the client will not only be less safe, but probably in the result pay much more, than at present. The total amount of law expenses, we venture to say, will not be diminished one iota: the change may be that the profits will find their way into the hands of a different class of men from the present, inferior both in legal knowledge and integrity.

Lord Brougham then said, "There was a reluctance among the profession to use these forms, because they were not compulsory. He had been asked why they were not compulsory: *it could not be done*. If practitioners chose to convey a piece of land by a long rigmarole and expensive deed, they (the legislature) could not compel them to use a shorter form. But he had introduced a clause in the present bill which he hoped would have this effect! In taxing costs, it authorized the taxing master to take into consideration, and to *disallow the long form*, if he should be clearly of opinion that *the shorter and simpler form would have sufficed*."

The taxing masters then are to be placed not only over all the solicitors of the largest experience, but over the most eminent conveyancers at the bar; and if the taxing master should think that, in advising on the marriage settlement of the next heir to the largest dukedom, Mr. Brodie, or Mr. Bellenden Ker, ought to have adopted the short, instead of the long form precedent, the solicitor is not to be paid his costs!

We observe that Lord Brougham's remark about the "great discomfort of cer-

tain practitioners of the law, but for whom he did not care," was noticed by Lord Campbell, who regretted that he should have cast the reflection he had done on the legal profession; and Lord Brougham then replied, that "he by no means intended a reflection on the profession in general: he had said only certain practitioners, solicitors, and others, were opposed to the measure: he believed that the greater number of intelligent men of the profession were in favour of it."

We shall resume our remarks on this measure so soon as the bill appears in print, and we recommend our brethren to consider whether any and what improvement can be effected in the mode of remunerating the profession, in case the legislature (contrary to all present expectation) should determine to adopt Lord Brougham's proposition.

## NOTES ON EQUITY.

### EXECUTOR'S ASSENT.—ITS EFFECT WHEN UNCONDITIONAL.

IN the case of *Shadholt v. Woodfall*,<sup>a</sup> before Vice-Chancellor Knight Bruce, a testator had specifically bequeathed certain leasehold estates; and the executors assented to these bequests unconditionally. The question arose, whether after such unconditional assent the executors could demand from the testator's general estate an indemnity against his covenants contained in the leases.

The Vice-Chancellor. "If an executor assent unconditionally to a specific bequest of leaseholds, he can require no indemnity from the residuary legatees."

The general rule of law is, that an executor's assent to a legacy cannot be retracted. The above case, therefore, though short, furnishes a lesson of caution and circumspection; and suggests the expediency of an executor considering well what he is about before he gives assent to a legacy.

### ASSIGNMENT OF A LEGACY BEFORE THE EXECUTOR'S ASSENT.

A testatrix, Eliza Dewell, entitled upon the decease of a tenant for life to a sum of stock, standing in the names of trustees, bequeathed the same to her grandson, Philip Daniel, and she appointed the said Thomas Dewell to be sole executor of her

<sup>a</sup> This is very much like the practice half a century ago of being "sworn at Highgate" not to drink small beer when you can get strong, unless you like the small beer best.

will. She died in May, 1833; and in June 1833, Thomas Dewell proved her will. In October, 1834, the grandson, Philip Daniel, being insolvent, executed a deed, assigning his property and effects upon trust for the benefit of his creditors. Now, at this period it did not appear that Thomas Dewell, the executor, had assented to the bequest of stock, and therefore the proper course would have been to give him, as executor, notice of the assignment for behoof of Philip Daniel's creditors—but this was omitted to be done.

Such being the case, Philip Daniel, in October, 1838, executed another assignment, by way of mortgage, of his interest in the said stock, in security for the repayment of a loan of money advanced to him by Holt. On the 21st November, 1838, notice of this second assignment was formally served upon the executor.

Notice of the trust assignment for behoof of the creditors was not given to the executor till May 1843.

Under these circumstances, Holt, in order to obtain a transfer of the stock, filed his bill, to which the trustee for the creditors appeared as defendant. And the question was, which of the two assignments—that of October 1834, or that of October 1838—should have priority.

The decision of Vice-Chancellor *Wigram* was bottomed upon a point apparently not emanating from counsel, but suggested by the learned judge in course of the argument. His Honour observed:—"In the absence of any assent by the executor to this specific legacy, the executor is the only person entitled to call for a transfer of the stock into his name. It is still vested in him as part of the estate of the testatrix. The defendant does not allege that any notice of the assignment for the benefit of the creditors was given to the executor till long after the mortgage to the plaintiff. I am therefore of opinion that the notice given by the plaintiff was sufficient to entitle him to the priority."

WHERE THE COURT WILL ITSELF DECIDE,  
OR DIRECT AN ACTION OR ISSUE.

The observations of Vice-Chancellor *Wigram* in *Raine v. Cairns*,<sup>b</sup> illustrative of the rule of practice as to the class of cases in which the court will itself decide, or will direct an action to be brought, or an issue to be tried, are instructive, and as

usual, carefully prepared. In substance his Honour remarked, that the mode in which the court proceeds varies with circumstances. In some cases the court will itself decide a question of fact, and of its jurisdiction to do so no doubt can be entertained. And this has sometimes been considered the proper course where a case has turned upon the construction of written instruments; for in such a case, the judge in equity may well be supposed as competent as a jury to arrive at a safe conclusion. Where the title of the plaintiff is not disputed by the defendant, but there is a question as to detail, (as in a tithe suit, where the defendant does not allege general exemption from the demand, but sets up a modus,) the usual course is to direct an issue. The onus in such a case is on the defendant, and an issue is in practice the ordinary mode of putting the question raised by the suit in the course of legal determination, where the court itself is not prepared to decide it. An action, unless under the special control of the court, might let the defendant in to make a different defence from that upon the record, as, for example, the Statute of Limitations, although no such defence would have been available when the bill was filed.

But in cases where there is an adverse claim of title on the part of the defendant accompanied by enjoyment, (as where the defendant in a tithe suit claims tithes, and is in fact in perception of them,) the court will not direct an issue, but will put the plaintiff to bring his action.

## SCOTTISH MERCANTILE LAW AND PRACTICE.

### No. 5.

#### BANKRUPTCY AND INSOLVENCY.

- I. The effect of English Bankruptcy and Insolvency upon Claims and Procedure in Scotland. And
- II. The right of the Assignee and Creditors in English Insolvency and Bankruptcy to Real Property and Securities situated in Scotland.

THE present paper is appropriated to the giving of some explanations, 1st, as to points chiefly affecting the relation of English bankruptcy to proceedings had in the Scottish courts for the securing, or the recovering payment, of debts due in Scotland; and 2ndly, as to the right of the assignee and creditors in English insolvency and bankruptcy to real property and securities situated in Scotland.

<sup>b</sup> 4 Hare, 333.

# I. THE EFFECT OF ENGLISH BANKRUPTCY AND INSOLVENCY UPON CLAIMS AND PROCEDURE IN SCOTLAND.

It is needless to premise, that, in regard to all matters of law, England and Scotland are considered as two separate countries. Their codes of laws are different; so are their courts, and the whole machinery of their judicial systems. Accordingly, questions of the sort here to be illustrated, belong to the department of international law; a section of jurisprudence still so incompletely evolved in its theory, and involving so many difficulties in the attempt to apply its rules to practice, that even professional and systematic writers on law feel it to be a duty to deal with it cautiously and sparingly. In papers like these addressed to English practitioners for practical use, such caution, in regard to points where English law may be indirectly involved, is tenfold more imperative. The only duty which we undertake in reference to this particular class of questions, is that of reporting the doctrines involved in actual decisions of the supreme courts of Scotland. It is of course quite beyond the province of these papers to attempt any comment for the purpose either of drawing remote inferences, or of attempting to reconcile contradictions in principle, if any of the decisions should be thought to involve such.

It will be recollected, then, that an English bankruptcy, (or any other proceeding of a like nature, held by the Scottish courts, like the English bankruptcy, to have taken place in a foreign country,) may come in competition with various proceedings taken in Scotland by creditors against debtors. And, further, the English or other foreign bankruptcy may come into competition, either, (1) with Scottish proceedings taken against the debtor by individual creditors for their private interest; or, (2) with the Scottish sequestration, which is the legal process corresponding in Scotland to the English fiat in bankruptcy.

Decisions have been pronounced by the supreme courts of Scotland upon the following points arising out of such competitions. Some of the decisions were pronounced before the changes in the English bankruptcy system; but it is believed that all the principles which (as here set forth) were properly applicable to the older commissions of bankruptcy in England, must apply equally to the fiat and the proceedings under it.

1. *Competition of English bankruptcy with Scottish "arrestments."*—Decisions have been pronounced in cases where an English or other foreign commission or fiat of bankruptcy has come into competition with the Scottish process called "Arrestment." The Scottish arrestment, to which, as Scottish lawyers understand, there does not exist in England anything analogous, except the process of foreign attachment within the city of London, and some other places, is an attachment in security, or for payment of money due to the debtor, or of moveable (personal) property of the debtor in the hands of a third party.

In regard to such proceedings, several decisions of the Scottish courts have been pronounced, the doctrine of which is thus summed up in the latest professional commentary on the bankrupt law of Scotland:—"The investment of the common debtor's estate in an assignee or other person, by the bankrupt law of another country, will be preferable to a subsequent arrestment; and, in particular, a fiat of Bankruptcy in England or Ireland will give a preference, from its date, to the assignee, over arresters in Scotland." (Burton.—*The Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland*. Edinburgh, 1845.)

2. *Effect of English Bankruptcy in staying imprisonment in Scotland.*—Decisions have been pronounced as to the effect of an English bankruptcy (in progress or wound up) upon the right of creditors to obtain execution against the debtor's person in Scotland.

Decisions have been pronounced on the question of imprisonment, in cases where the English bankrupt had not obtained his certificate.

(1.) It has been held that, although a commission of bankruptcy had been issued against a debtor in England, and an English creditor had proved his debt under the commission, yet, as the debtor had not obtained his certificate, he was not protected from execution against his person in Scotland, at the instance of that creditor. And it has also been held, in conformity with the principle of that decision, that an English bankrupt against whom a commission had been issued, but who had not obtained his certificate, might be imprisoned in Scotland on a warrant as being in *meditationes fugae*, (a warrant which is issued in Scotland in certain circumstances, when affidavit is made that a debtor intends to flee from the country.)

(2.) In the decision next to be cited, a principle is laid down which shows that an opposite decision would have been pronounced in the cases just referred to, if in these the bankrupt had already obtained his English certificate. For—

3. *An English certificate is a discharge in Scotland.*—Judgment has been given as to the effect of an English certificate, generally, upon claims brought against the bankrupt in Scotland.

It has been held, that a certificate under an English commission of bankruptcy operated as a discharge of all claims, and protected the debtor in Scotland.

4. *How does English bankruptcy affect Scottish sequestration?*—Decisions have been pronounced as to the effect which an English bankruptcy must have upon a Scottish sequestration; or, in other words, as to the effect which the English proceedings have on the rights of parties who claim under proceedings of the very same nature instituted in Scotland.

Such questions have arisen, both in regard to the personal property, and in regard to the real.

1. *Personal property.*—In 1811, a commission of bankruptcy was issued in England on

the 11th of July, and the estates of the same person were sequestered in Scotland on the 17th. It was held, that the assignees under the commission were preferable to the moveable, (or personal,) property in Scotland. Indeed, the principle of priority here is so plain, that no difficulty could occur in a case regarding *personal* property.

But difficulties of a more serious kind intervene when *real* property (or "heritable" property, as it is technically called in Scotland) is the subject of competition between two bankruptcies,—a Scottish and an English,—or between parties claiming respectively in virtue of the laws of the two countries.—This difficulty arose in the case next to be cited.

2. *Real property*.—In 1817, an English commission of bankruptcy was issued against a trader in England and Scotland; and a sequestration of the same person afterwards took place in Scotland. The sequestration was not objected to; and the trustee appointed under it was infest in the bankrupt's heritable property (or had his title made real by seisin) before the assignees under the English commission.

The heritable property covered by the seisin was then sold, under reservation of all questions as to the price and rents; and these became the subject of competition between the Scotch and English creditors. It was held, that the English assignees were not entitled to insist that the Scottish trustee should deliver the rents and price to them.

This last case has been described for the purpose of showing that the Scottish law,—through that array of formalities in which its feudalism has invested the transmission of real or heritable property—interposes in the way of English assignees wishing to seize Scottish lands or houses of the bankrupt, difficulties of very serious kinds.

## II. THE RIGHT OF THE ASSIGNEE AND CREDITORS IN ENGLISH INSOLVENCY AND BANKRUPTCY, IN REAL PROPERTY AND SECURITIES SITUATED IN SCOTLAND.

But under the English Insolvent Debtors' Act now in force, the Scottish courts have lately held themselves bound to let in the English assignees to an extent which has not a little startled some of the Scottish conveyancers. A recent decision pronounced on this head is of very great importance to those interested in English bankruptcies or insolvencies, which have any claim on real property in Scotland. The assignees in such bankruptcies or insolvencies have it in their power on the precedent of that decision, to secure easily and cheaply a decisive advantage in claims upon Scottish real property. We have stated above, that most questions of this kind fall under the rules of international law. But the question here to be described was decided upon this principle—that a particular statute of the imperial parliament does, by its terms, apply in certain respects, not to England only, but to Scotland also.

### 1st. *The English Insolvent Debtors' Act.*

In 1839, A, a merchant,\* who had formerly resided in Edinburgh, but had lately removed to London, applied for the benefit of the English act for the relief of insolvent debtors. The English courts pronounced a "vesting order" under the statute, vesting A.'s estate and effects, real and personal, in one of its own provisional assignees; and it afterwards appointed B, resident in London, to be assignee in the estate and effects of the insolvent.

The attention of B. was directed to the insolvent's *real* property in Scotland; and taking advantage of the of the 46th section of the statute, he demanded and obtained registration in the general register of seisins for Scotland, (kept at Edinburgh,) of the vesting order in favour of the provisional assignee, and the appointment in his own favour. He immediately found use for this step in competing with a Scottish creditor of the insolvent.

The insolvent had acquired a real right over certain lands in Scotland belonging to the Earl of —; and C., one of the Scottish creditors, had begun to take, in the supreme court of Scotland, those judicial measures which (by a process called an adjudication) the law of Scotland enables a creditor to take, for attaching and converting into money for his own benefit, the lands over which the real right extended. C. had not yet obtained any judgment in this suit, when B., the English assignee, appeared to resist the suit and to claim a preferable right to the lauds in question.

The English assignee pleaded, that, in virtue of the English Insolvent Debtors' Act, and the above proceedings had under it, the *real* estate of the insolvent in Scotland, (no less than his personal or moveable effects,) had been conveyed to, and vested in, him (the English assignee); and that it was therefore incompetent and illegal for any of the insolvent's alleged creditors to interfere with the property so invested in B., or with his judicial management and disposal thereof for the common benefit.

This plea was strongly resisted on the part of the Scottish creditor C., who pleaded, upon various grounds, that the English Insolvent Debtors' Act was not intended to vest, and could not legally vest, in the English assignee, heritable or real estates situated in Scotland.

The case was felt to present much difficulty. The Lord Ordinary, (or Puisne Judge,) before whom the suit was first brought, referred it to one of the two divisions of the court, to which his judgment, if he had pronounced any, would have been appealable. The judges before whom it so came were equally in doubt, and their lordships accordingly, availing themselves of an alternative allowed them in questions of difficulty, or involving points of great importance, laid the question before the whole court, to be decided by a majority of voices of the thirteen judges.

\* *Rattray v. White*, 8th March, 1842. Reports of Bell, Murray, and Donaldson, iv., 880-889.



A large majority of the learned judges (two being absent, and not more than two others dissenting,) held that the plea of the English assignee was good. Accordingly, the court sustained the claim of the English assignee to the lands in question, and found that none of the insolvent's alleged creditors could legally or competently interfere with the property so vested in the English assignee; and they pronounced judgment against the Scottish creditor C., in his suit for establishing a right to those lands.

In regard to the effect, then, which the "Vesting Order" under the *English Insolvent Debtors' Act* has in attaching, for the common benefit of the creditors, real rights of the insolvent in lands or houses situated in Scotland, this decision, pronounced by nearly the whole court on mature deliberation, is directly authoritative and highly important.

1. It follows from the decision that, particularly under the 46th clause of the act, (which enacts, that "where any conveyance or assignment of any real or personal property" would require to be registered, the certificate of the "vesting order," &c. it is to be registered in its place,) the vesting order in the assignee of an insolvent's estate in England, being registered in the Scottish register of seisin, gives a preference over a creditor seeking to establish a personal right to the insolvent's real property in Scotland by the Scottish process of adjudication.

Where, therefore, the English assignee of an insolvent debtor has only the personal rights of creditors in Scotland to compete with, his preference is undoubted, and is most cheaply and easily gained. He secures it by merely causing his vesting order to be recorded at Edinburgh, in the general register of seisin for Scotland.

2. The sanction, however, which the court gave to the recording of the vesting order in register, goes by implication a step farther: difficult though it may be, on the feudal principles of the Scottish law, as to the transmission of real property, to follow out the principle to all its consequences.

The recording of a Scottish seisin in the register of seisin, gives a *real* right to the property over which the seisin extends. Now, it would seem, that from the sanction which the court gave to the recording of the vesting order in the register of seisin, it is to be held that the recording of the order is equivalent to recording a seisin.

If it be so, this decision would, to all appearance, if carried out, have the effect of making the English assignee's title, by his recorded vestry order, &c. a real right. And again, this would actually put the English assignee in a position more favourable than that of the trustee in a Scottish sequestration; for the Scottish trustee's registered act and warrant (which constitutes his title to the debtor's estate and effects in Scotland) is only personal.

## 2nd. The English Bankruptcy Court Act.

It must be remarked, that, to whatever extent the recorded vesting order made under an

English insolvency, gives the assignee a preference to real property in Scotland,—to the same extent will a preference be created by a similar procedure, in favour of an assignee under the *English Bankruptcy Court Act*.

The inference so drawn, by parity of reasoning, is thus set forth in Mr. Burton's excellent work, cited above. "It may be observed, that in the English Bankruptcy Court Act, there is a similar clause for recording the title of an assignee in bankruptcy,—which it may be presumed will receive the same interpretation. (Burton. *The law of Bankruptcy, &c. in Scotland*.) Indeed, in the very able and elaborate written opinion which was delivered by the learned chief judge of the court in the case above described,—and in which opinion the greater number of the learned judges expressed a similar acquiescence, a considerable part of the reasoning was founded upon a comparison of the clauses in the Insolvent Debtors' Act, with those of the Bankruptcy Court Act: and the terms of the one act were held as interpreting and explaining those of the other.

Accordingly the present position of the Scottish law on this point is easily understood. On the one hand, no decision has as yet been pronounced, bearing directly on the question as it arises under the English Bankruptcy Court Act. But, on the other hand, unless the Scottish judges shall be brought, on reconsideration, to depart from the principles which guided their deliberate judgment on the question as raised under the Insolvent Debtors' Act,—their decision on that question must (it should seem) by necessary consequence, rule any decision which they may be called on to pronounce on a similar claim advanced by an assignee in English bankruptcy.

## 3rd. Practical consequences.

It would be easy to point out several very important results which would follow, in regard to the Scottish interests of an English bankrupt or insolvent, from the principles which have thus been established. But the direct and immediate effect of these principles upon the interests of the creditors are obvious, without further explanation; and it is enough to repeat distinctly the advice which is involved in the preceding exposition.

The registering of the assignee's title, in terms of the act, was a step taken by the assignee in the case in question, and recognised as the step by which his title to the Scottish estate was made good. Therefore, wherever an English bankrupt or insolvent has a right, or the most remote chance of a right, in Scottish lands or houses,—whether that right be in property or in security,—it would be no more than wise and prudent that care should be taken to have the assignee's title recorded without loss of time, in the general register of seisin for Scotland. The recording would be attended with little trouble and very trifling expense.

The importance of the recording in the Scottish register can hardly, in such cases, be overrated. For the registration being required by the law of Scotland for the completion of

all such rights, and the case above cited being the precedent; it might not improbably be found that the recording or non-recording would determine the question, whether the Scottish lands and real securities of the debtor do or not belong to the English assignee and the creditors whom he represents.

In this series of papers we have pointed out some of the most remarkable peculiarities which distinguish the Scottish law from the English, in respect of actions and execution upon dishonoured bills of exchange; and a few examples of the manner and of the degree in which the Scottish courts of law have given effect to insolvency arising in England, or elsewhere beyond the limits of their jurisdiction.

We have been induced to bring these subjects to the notice of our readers from their increasing importance, arising out of the constant and rapidly increasing communication between these two great divisions of the kingdom. The information on the state of the law, in many respects, lies scattered over numerous volumes, and in matters of practice can only be imperfectly gathered from any treatise.

In these papers we have the advantage of the practical knowledge of their author, Mr. John Gilmour, one of the solicitors of the supreme courts of Scotland, now established as a Scottish lawyer in London; and the clear and concise statement which he gives of the result of personal experience on the points of practice under consideration, cannot, we think, fail to be of great practical use to our readers. The contents of the paper in our present number illustrate forcibly the anomalous position which England and Scotland held towards each other, on account of their difference in law and judicial procedure. The decisions upon many such questions of bankruptcy, brought before the Scottish courts, would be exactly the same, whether the bankruptcy had occurred in England or France, or the United States of America; but many cases, particularly the important one last above described, stand in a different predicament. They are to be held, not as foreign cases, but as cases affected by the statute law common to the whole realm. They are cases affected by certain acts of parliament, which, although principally designed, in most cases, to regulate procedure in England, are yet so framed as to be, in certain respects, applicable to Scotland likewise. Difficulties inevitably arise out of such an extension of the provisions of statutes—difficulties

which are among the many evils caused by the conflict of laws and of judicial systems—and difficulties as to which it is to be regretted, especially in reference to commercial interests, that they should occur in the relations of two countries which have for centuries formed parts of the same kingdom, which have long had even a common legislature, and which to all practical purposes are and should be one and the same nation.

The remedies to be obtained by Scottish legal procedure are of course rarely known to English practitioners. In matters of this description the difficulties in practice often require immediate explanation, and are seldom to be found so solved in the books of practice, as precisely to meet the point of difficulty which in an emergency has arisen. It cannot fail, therefore, to be very useful to the profession, that personal explanation and guidance with regard to the law and practice of Scotland, can be obtained from an experienced practitioner such as Mr. Gilmour, resident in London.

In a few subsequent papers, in continuance of the present series, we shall invite the attention of our readers farther to the subject of bankruptcy and insolvency, and point out some useful details of international practice for the English solicitor, in preparing proceedings for the Scottish courts.—Ed.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st February, 1846.

### Courts of Equity.

#### I. PRINCIPLES OF EQUITY.

##### ANNUITY.

1. *Exoneration of personality.*—Upon the construction of certain letters, aided by parol evidence. *Held*, that a testator, for valuable consideration, contracted to grant an annuity for the lives of certain persons; and upon the construction of the testator's will: *Held*, that the same annuity was charged as a "debt" upon his real estate, in exoneration of his personality. *Money Penny v. Muscall*, 2 Coll. 213. See *Buwer v. Astley*, 1 Phillips, 422; *Nield v. Smith*, 14 Ves. 491.

2. *Term securing payment.*—On settled estates being cleared of all charges except annuities, the party entitled to the possession subject to the term, would be entitled to the beneficial enjoyment during the residue of the term, keeping down the annuities; and the term would still be available for the annuitants in enforcing payment of the annuities. *Ferrand v. Wilson*, 4 Hare, 368, 369.

And see *Jointure*.

## APPORTIONMENT.

**Maintenance.**—An annuity given for maintenance, and charged upon land for a certain time, which ceased before the time of the year at which the annuity was payable, the annuitant was held entitled to an apportioned part of such annuity for the time between the last payment and the cessation of the charge. *Sheppard v. Wilson*, 4 Hare, 395. See *Longmore v. Elcum*, 2 Y. & C. C. C. 363; *Reynish v. Martin*, 3 Atk. 330.

## ASSETS.

See *Will*, 1.

## CHAMPERTY.

**Mortgagees.**—**Breach.**—**Waiver.**—Several suits at law and in equity to determine the title to certain lands, were pending between persons claiming to be mortgagees of such lands, and one who claimed the same lands in fee by title, under a settlement, paramount to the mortgage. The plaintiff, claiming to be a subsequent mortgagee of the same lands, contracted to purchase the interests of the prior mortgagees in their principal monies, arrears of interest, and securities, and to pay the purchase money at certain stipulated times, all of which (except an annuity) were to be paid in 1843; and to pay and indemnify the prior mortgagees against the past and future costs of the suits and proceedings; and time was to be of the essence of the contract. The plaintiff did not pay the instalments until a considerable time after the stipulated period, but such later payments were accepted by the vendors. The bill, filed in 1845, (when some of the payments still remained to be made,) alleged, that the defendants refused to perform the agreement, and prayed a specific performance.

**Held**, on demurrer, that the plaintiff being interested as second mortgagee, in the subject of the suits, the contract was not to be deemed champerty.

That, the defendants insisting upon their right to treat the agreement as void, the plaintiff was not bound to tender the unpaid instalments of the purchase money before filing his bill.

That every default by the plaintiff in payment of the instalments at the stipulated time, is a new breach of the contract, giving the defendants the right to rescind it; but that to preserve such a right, it must be asserted immediately that the breach occurs; and that in this case, the breach had been waived.

That the time of performing the several acts required by the agreement on both sides being past, a court of equity would now enforce a contemporaneous performance of the contract by both parties. *Hunter v. Daniel*, 4 Hare, 420.

Cases cited: *Sharp v. Carter*, 3 P. Wms. 378; *Wood v. Downes*, 13 Ves. 120; *Uppington v. Bullen*, 2 D. & War. 184; *Findon v. Parker*, 11 Mee. & Wels. 678; *Prosser v. Edmonds*, 1 Y. & Coll. 481; *Harrington v. Long*, 2 Myl. & K. 590; *Pordage v. Cole*, 1 Wms. Saunders, 320; *Lloyd v. Lloyd*, 2 Myl. & Cr. 192; *Levy v. Lindo*, 3 Meriv. 81; *Williams v. Shaw*, 3 Russ. 178, n.; *Hudson v. Bartram*, 3 Madd. 440; *Carew v. Johnston*, 2 Seb. &

Lef. 280, 305; *Attorney-General v. Mayor of Norwich*, 1 Keen, 700; *S. C.* 2 Myl. & Cr. 406; *Houghton v. Reynolds*, 2 Hare, 264; *Cuthbert v. Creasy*, 6 Madd. 180; *Hartley v. Russell*, 2 Sim. & Stu. 244.

See notes on this case, p. 422, ante.

## CHARTER-PARTY.

An agreement, between the owners and the merchants, for the employment of the ship on a certain voyage, not in writing, but acted upon by the parties, is equivalent to a charter-party. *Lidgett v. Williams*, 4 Hare, 462.

## CONTINGENT REMAINDER.

**Barring.**—Contingent remainder created by a limitation to the use of the husband and wife, and the survivor and the heirs and assigns of the survivor, barred by a fine subsequently levied by the husband and wife. *Parker v. Carter*, 4 Hare, 409. See *Vick v. Edwards*, 3 P. Wms. 372; *Doe v. Oliver*, 10 B. & C. 181.

## COPYHOLDS.

**Renewal of Leases.**—**Apportionment of fine.**—**Costs.**—Lands holden under a lease for four lives, and renewable upon payment of a fine, are devised to trustees in trust for the testator's wife for life, she keeping good the renewals and filling up the lives, and subject to her life-interest, in trust to let and set the same, and after paying the chief and other rents and land-tax, and keeping full the lives, to pay the residue thereof to W.; and after his decease, upon certain trusts for the benefit of the testator's grand-children. Upon the death of the testator, his widow enters. She afterwards dies insolvent, having neglected to substitute a life that of C., one of the nominees for life, who died in her life-time. W. then enters, and likewise omits to substitute a life for that of C.; and seven years after the commencement of his possession, Q., another nominee, dies: **Held**, that two lives must be substituted for those of C. and Q., and that the costs of the renewal being in the first instance raised by a mortgage of the estate, W. must repay such part of the expenses as is incurred in renewing the second life, but that he is in no default for not having renewed the first life, and is exempt from such portion of the expenses as ought, on the death of C. to have been paid by the widow, together with interest thereon, at the rate of 5l. per cent. per annum, from the death of C. to the death of Q. *Wadley v. Wadley*, 2 Coll. 11.

See *Limitations, Statute of*.

## COSTS.

See *Vendor and Purchaser*, 1, 2; *Copyholds: Legacy*, 3.

## DEBTOR AND CREDITOR.

**Set-off.**—**Priority.**—**Lien.**—T. being, under a will, trustee of 800l. for two persons, in moieties, leaves that sum outstanding, on the promissory note of J. The note is payable to T. only, and not to T. or order. In 1839, T. becoming embarrassed, endorses the note to his banker M., (who is also the banker of J.) as a security for advances, M. having no notice of the trust. In 1840, T. becomes beneficially

entitled to one moiety of the 800*l.* In 1841, *J.* becomes a creditor of *T.* for goods sold, and claims set-off against the note. On the 7th April, 1842, *J.* has notice, through his agent, of the endorsement of the note to *M.* In July, 1842, *T.* becomes bankrupt. *Held*, that, as to the moiety of the 800*l.*, which is held by *T.* in trust, the trust must prevail against the banker's security; 2ndly, that as to the other moiety, the set-off of *J.* must prevail against the banker's security up to the 7th April, 1842; 3rdly, that, subject to the trust and the set-off, *M.* has a lien on the monies of *J.* in his hands, which will operate *pro tanto* in discharge of the debt secured by the promissory note, and so assigned to *M.*

A landowner employs an agent to act for him generally in his money matters, draw cheques on his bankers, &c. The person so employed being directed by his principal to pay a certain debt on the next rent-day, gives notice to the creditor that the debt will be paid at that time. *Semble*, That this direction and notice, even with the additional promise by the agent that the debt shall be paid out of the rents, give the creditor no specific lien on the rents.

A debtor, who, for money advanced, had given to his creditor his promissory note, and, as a collateral security, had deposited with him a policy of assurance, and who had, on the other hand, a right of set-off in respect of goods sold, applied to the creditor to have the policy delivered up for a purpose unconnected with the debt, and replaced by another security. The policy was accordingly delivered up. *Held*, that the debtor's right of set-off was not thereby displaced. *Moore v. Jarvis*, 2 Coll. 60.

Cases cited: *Hill v. Lewis*, 1 Salk. 132; *Rose v. Clarke*, 1 Y. & C. C. 534; *Malcolm v. Scott*, 3 Hare, 39; *Foster v. Blackstone*, 1 Myl. & K. 297; *Turton v. Benson*, 2 Vera. 764.

#### DEVISE.

See *Tenant by Courtesy*, 1.

#### EQUITABLE ASSETS.

See *Will*, 1:

#### EXCHANGE.

**Power.—Tenant for life.**—The exercise of a power of exchange for lands of equal value by a tenant for life in possession, and having the legal estate, cannot in equity be questioned on the ground of inadequacy of value by the tenant in tail in remainder expectant on an existing tenancy for life; the question of the due exercise of the power is legal, for, if the value of the lands taken was inadequate, no estate passed at law by the conveyance. *Ferrand v. Wilson*, 4 Hare, 385.

#### EXECUTOR.

1. **Indemnity.**—An executor, who has assented unconditionally to a specific bequest of the testator's leasehold estates, is not entitled to an indemnity out of the testator's general estate in respect of his covenants contained in the lease. *Shadbolt v. Woodfall*, 2 Coll. 30.

See notes on this case, p. 518, *ante*.

2. **Charge and Discharge.**—An executor

charged with the receipt of rents, stated in the schedule to his examination, that he had received, in respect of rents, after deductions to a certain amount for bills due from the testator to the tenants, so much; the Master charged the executor with the whole amount, including the alleged deductions. *Held*, on exception, that although the executor had, by this form of admission, charged himself with the aggregate sum, yet, as the whole statement must be read, he had also discharged himself, *prima facie*, by the evidence which it contained of the repayment to the tenants, which repayment it was open to the other parties to impeach. *Jago v. Kenny*, 4 Hare, 452. See *Ridgeway v. Darwin*, 7 Ves. 404; *Thompson v. Lambie*, *id.* 587; *Robinson v. Scootney*, 19 Ves. 582.

3. **Cutting timber.**—Executors cutting timber upon a supposed trust, afterwards held to be void, might be personally chargeable in equity, as trustees for the owner of the timber, if they acted fraudulently, or if they retained the proceeds of the timber, or gained any benefit by it, but not if they acted by mere mistake, and held no part of the proceeds in their hands. In the latter case, the executors might be regarded in equity as strangers, who, under a mistaken supposition of right, had done a legal wrong, for which there was a legal remedy. *Ferrand v. Wilson*, 4 Hare, 383.

And see *Priority*; *Will*, 7.

#### FINE.

Deed executed in September, 1790, not ineffectual by lapse of time only in declaring the use of a fine levied in Hilary Term, 1788.

*Semble*, the mutual concurrence of a husband and wife, in the levying of a fine of lands in which they were jointly interested, and in the declaration of the uses for the benefit of their issue, constitutes a valuable consideration to support the deed declaring such uses. *Parker v. Carter*, 4 Hare 409.

#### FORM.

A court of equity will neither allow the form of a transaction to protect a fraud, nor set aside a transaction otherwise valid, merely on the ground of form. *Ferrand v. Wilson*, 4 Hare, 386.

#### HEIR AT LAW.

See *Voluntary Deed*, 2.

#### HUSBAND AND WIFE.

**Mortgage.—Survivorship of Wife.**—Husband executed mortgages of his wife's equitable chattels real, and died in his wife's lifetime without having paid the mortgage money. *Held*, upon the construction of the instruments of mortgage, that the transactions were intended solely as a security to the mortgagees for the money lent, and not as a reduction of the chattels into the husband's possession; consequently, that the wife, by survivorship, was entitled to the equity of redemption. *Clark v. Burgh*, 2 Coll. 221.

Cases cited: *Pitt v. Pitt*, Turn. & Russ. 180; *Bates v. Dandy*, 2 Atk. 207; 1 Russ. 33, n.; *Watts v. Thomas*, 2 F. W. 364; *Steed v.*

2. **Construction.**—Residuary gift upon trust

for the testator's wife for life, if she should so long survive his widow; and from and after her death or marriage, upon trust to pay and divide the whole thereof, equally amongst all and every the testator's nephews and nieces, share and share alike, within six months after they should become entitled thereto. *Held*, that the residuary share of one who died in the lifetime of the widow passed to his representatives. *Peckham v. Gregory*, 4 Hare, 396.

Cases cited: *Leake v. Robinson*, 2 Meriv. 363; *Reed v. Rawlins*, 1 Sim. & Sta. 328; *Benyon v. Meddison*, 2 Bro. C. C. 75; *Murray v. Tansard*, 10 Sim. 465; *Parr v. Parr*, 1 Myl. & K. 647; *Leeming v. Shearatt*, 2 Hare, 17; *Salisbury v. Petty*, 3 Hare, 86; *Batsford v. Kobbell*, 3 Ves. 363; *Vawdry v. Geddes*, 1 Russ & Myl. 303; *Billingsley v. Wells*, 3 Atk. 219; *Barnes v. Allen*, 1 Bro. C. C. 181; *Saunders v. Vautier*, 1 Cr. & Ph. 240.

3. *Apportionment of costs.*—Legacies of stock given by a married woman by her will, executed in pursuance of a power, held, notwithstanding the stock was misdescribed, to be specific; and the costs of a suit instituted by the executors, who were also the residuary legatees of the testatrix for the purpose of having the trusts administered, directed to be borne rateably by the specific legacies. *Warren v. Poolehouse*, 2 Coll. 116.

Cases cited: *Duke of Marlborough v. Lord Godolphin*, 3 Ves. sen. 75; *Southby v. Stonehouse*, ib. 612; *Cotter v. Layer*, 2 P. W. 623; *Howson v. Reed*, 5 Madd. 451; *Selwood v. Mildmay*, 3 Ves. 306; *Mackinley v. Sison*, 3 Sim. 561; *Spong v. Spong*, 3 Bligh. N. S. 84; *Simmons v. Vallance*, 4 Bro. C. C. 345; *Fonneron v. Poynts*, 1 Bro. C. C. 472; *Attorney-General v. Grote*, 2 Russ. & Myl. 699; *Ashton v. Ashton* Ca. t. Talb. 152; *Sleech v. Thorington*, 2 Ves. sen. 360, 364; *Miller v. Travers*, 8 Bing. 244, 252; *Page v. Leapingwell*, 18 Ves. 403; *Young v. Martin*, 3 Y. & C. C. C. 388.

See *Will*, 5, 7.

#### LIEN.

See *Usury*; *Debtor and Creditor*.

#### LIMITATIONS, STATUTE OF.

*Court rolls.*—The lord of a manor granted a lease of the manor to A. B. to hold for three lives, and deposited with A. B. the court rolls. In 1830, the lease expired by the death of the survivor of the lives. In 1823, the grantor by letter requested A. B.'s representative to deliver up the court rolls. No notice was taken of this letter, nor was any farther application made by the grantor till the year 1844, when he filed a bill against A. B.'s representatives to recover the court rolls and title deeds of the manor. The defendant, by his answer, relied on the statute of limitations. *Held*, that the bill was filed too late. *Dean and Chapter of Wells v. Doddington*, 2 Coll. 73.

Cases cited: *The Lord Buckhurst's case*, 1 Rep. 1; *Dr. Layfield's case*, 10 Rep. 88; *Jenk. cent. Ca. 80*; *Jackson v. Butler*, 2 Atk. 306; *Strode v. Blackburne*, 3 Ves. 322; *Carter v. Croydon Canal Company*, 4 Y. & C. 405.

2. The fact that the legal remedy which existed is obstructed or lost by lapse of time is no ground for the interposition of a court of equity. *Perrand v. Wilson*, 4 Hare, 394.

And see *Perpetuity*, 1.

#### MAINTENANCE.

See *Will*, 4.

#### MODUS.

See *Trusts*.

#### MORTGAGE.

See *Champerly*; *Husband and Wife*; *Insurance*; *Vendor and Purchaser*, 2.

#### PERPETUITY.

1. *Powers.*—*Tenant in tail.*—*Timber.*—*Trustees.*—*Statute of Limitations.*—Devise of real estates to trustees for a term of 21 years, and subject thereto and to the trusts thereof, to A. for life, with liberty to cut timber, &c., for buildings and repairs only; remainder to B. for life, with like liberty, &c.; remainder to the sons of B. successively in tail; and, after like remainders, to C. and D., and their sons respectively; remainder to E. for life, with like liberty, &c.; remainder to the sons of E. successively in tail; with divers remainders over; remainder to the testator's own right heirs, with the declaration that the trustees of the term should receive the rents and profits of the estates, cut, fell, and sell, the timber at mature growth, in due succession, and yearly (until the testator's debts and pecuniary legacies should be paid) thereout pay,—1. A certain annuity, and also a yearly rent charge of 1000*l.* to the person entitled to the estates expectant on the determination of the term; 2. The expenses of the trust; 3. His funeral expenses; and 4. The pecuniary legacies and annuities given by his will, or so much as his personal estate should not pay. And after such payment, or the raising of a fund sufficient for the same, to permit the person entitled to the estates expectant on the term, to enter into possession thereof, subject to such annuities as should then remain charged, and the term then to cease. The testator empowered the tenants for life, and the respective devisees in possession, to exchange part of the devised lands for others of greater or equal value, and authorised his executors to preserve the wood, so as to continue a succession in the falls thereof; and he empowered them during and after the term, until some person was entitled to the estates in tail, or for some greater estate, to enter and cut timber at mature growth for sale, and to apply the proceeds in payment of his funeral expenses, debts, and legacies, until the trusts of the term should be satisfied; and then, with the consent of the devisees in possession, to invest the surplus in the purchase of other lands in fee, to be settled to the same uses as the devised estates. The testator died in 1803. The personal estate sufficed to pay his debts and pecuniary legacies, but not to provide for the annuities. B., then the first tenant for life, on the death of the testator, entered into possession of the estates,

and so continued during his life. *B.* died in 1837, without issue, whereupon *E.*, the next surviving tenant for life, entered into possession. In a suit instituted in 1842, by the first son of *E.*, as tenant in tail expectant on the decease of *E.*, against the representatives of the trustees, and the executors of *B.* the deceased tenant for life:

*Held*, that the tenant in tail expectant on the decease of *E.* was not entitled to an account of the timber felled during the life of *B.*, the power attempted to be given to the trustees being void under the rule against perpetuities;

Nor to an account of the produce of the timber during the period to which the power might have lawfully extended, as such power had not been apportioned;

Nor to an account in the court of equity, as against the estate of *B.*, or of the trustees, of any timber cut during the life-time of *B.*, the right of the plaintiff (if any) being a legal right, and the defendants being entitled to the protection of the statutes of limitation.

And that the plaintiff as such tenant in tail expectant, was not entitled to relief in equity, on the ground that the exchange effected by *B.* of certain of the devised estates for other estates, was not a due exercise of the power of exchange; for, if the exchange was not warranted by the power, the legal estate in the devised premises did not pass by the conveyance. *Ferrand v. Wilson*, 4 Hare, 344.

Cases cited: *Biddle v. Perkins*, 4 Sim. 135; *Powis v. Capron*, ib. 138, n.; *Waring v. Coventry*, 1 Myl. & K. 249; *Wood v. White*, 4 Myl. & Cr. 460; *Wallis v. Freestone*, 10 Sim. 225; *Boughton v. James*, 1 Coll. 26; *Ker v. Ld. Dunganon*, 1 Dr. & War. 509; *Thomas v. Sorrell*, *Vaugh.* 351; *Figot v. Bullock*, 1 Ves. jun. 479, 484; *Scorrell v. Boxall*, 1 Y. & Jer. 396; *Power v. Eyre*, *Cooper*, 156; *Tooker v. Annesley*, 5 Sim. 335; *Waldo v. Waldo*, 7 Sim. 260; *Drummond v. Duke of St. Albans*, 5 Ves. 483; *Wilkinson v. Proud*, 11 Mes. & W. 33; *Muskett v. Hill*, 7 Scott, 854; *Sir J. Jackson's case*, 2 cases and opinions, 94, 97; *Hall v. Hallett*, 1 Cox, 134; *York Buildings' Company v. Mackenzie*, 8 Bro. P. C. 42, Tom. ed.; *Pulteney v. Warren*, 6 Ves. 72; *Lloyd v. Johns*, 9 Ves. 37; *Mortlock v. Buller*, 10 Ves. 292, 308; *Read v. Shaw*, 2 Sug. Pow. 604, (ed. 7.) *McQueen v. Fairquhar*, 11 Ves. 467; *Dornford v. Dornford*, 12 Ves. 127; *Howard v. Ducane*, T. & R. 81; *Grover v. Hugel*, 3 Russ. 428; *Bennett v. Colley*, 5 Sim. 181; *Attorney-General v. East Retford*, 2 Myl. & K. 35; *Greenlaw v. King*, 3 Bear. 49, 61; *Bridges v. Branall*, 12 Sim. 369; *Turner v. Trelawney*, ib. 49.

2. If the power of the trustees to cut timber for the purpose of settlement be permissive only, and not imperative, it is at least concurrent with the right of the infant tenant in tail, to the timber, and, to the extent in which it derogates from that right, it is liable to the objection of creating a perpetuity. *Ferrand v. Wilson*, 4 Hare, 367. See *Ware v. Polhill*, 11 Ves. 267; *Lord Southampton v. Marquis of Hertford*, 2 V. & B. 54; *Marshall v. Holloway*, 2 Swans. 432; *Ibbetson v. Ibbetson*, 10 Sim. 495; *S. C.* 5 Myl. & C. 3.

And see *Power*.

## PORTIONS.

*When to be raised.*—The trusts of a term of years were to raise as portions for younger children 5,000*l.*, if there should be one; 8,000*l.* if two; and 10,000*l.* if three or more, to be divided equally, the shares of the sons at 21, and the shares of the daughters at 21 or marriage. There were three younger children: *Held*, on petition, that the heir at law, on attaining 21, was not entitled to have the portions raised, and his estate discharged, before the portions became payable; and that a court of equity would not order a larger sum to be raised for portions than had actually become vested and payable to the children who had attained 21 or married. *Sheppard v. Wilson*, 4 Hare, 392. See *Dickenson v. Dickenson*, 3 Bro. C. C. 19; *Winter v. Bold*, 1 Sim. & Stu. 507.

## POWER.

*Apportionment.*—Whether a power not to effect a single act at a period too remote, but to do successive acts from time to time, each being *pro tanto* an exact fulfilment of the intention of testator, may not be apportioned and sustained, so far as its operation in each case does not invade the rule against perpetuity, and held void only from the time that it would begin to infringe that rule.—*Quære.* *Ferrand v. Wilson*, 4 Hare, 377. See *Boyce v. Hansing*, 2 Cro. & Jer. 334; *Ware v. Polhill*, 11 Ves. 257; *Hussey v. Hussey*, 5 Mad. 44.

And see *Exchange; Perpetuity; Will*, 3.

## PRIORITY OF CHARGE.

*Notice to executor or trustee.*—A testatrix, entitled, upon the decease of a tenant for life, to a sum of stock standing in the names of *D.* and *L.*, as trustees, bequeathed such stock to *P.*, and appointed *D.* her sole executor. In 1834, after the death of the testatrix, *P.* assigned all his estate and effects to *L.* and *H.*, upon trust for his creditors. In 1838, *P.* assigned his interest in the stock to the plaintiff by way of mortgage, and the plaintiff thereupon gave *D.* notice of the incumbrance. No notice of the assignment of 1834 was given to *D.* until 1843: *Held*, that until *D.*, the executor, had assented to the legacy to *P.*, the notice to *L.* of the deed of 1834 was insufficient to exclude a subsequent incumbrancer from obtaining priority, and that the notice of the incumbrance of 1838, given to *D.* by the plaintiff, entitled the plaintiff to the prior charge on the fund.

That a suit instituted by some of the creditors under the deed of 1834, to execute the trusts of such deed, as it did not give the plaintiff or the executor actual, so neither could it be held to give them constructive notice of that instrument. *Holt v. Dewell*, 4 Hare, 446. See *Tinson v. Ramsbottom*, 2 Keen, 35; *Mear v. Bell*, 1 Hare, 73; *Smith v. Smith*, 2 Cro. & Mes. 231.

See notes on this case, p. 518, ante.

See *Debtor and Creditor; Vendor and Purchaser*, 2.

# REVERSION.

**Inadequacy of price.**—Sale of a reversionary interest in real and personal property set aside, on the ground of inadequacy of price. *Edwards v. Brysons*, 2 Coll. 100.

Cases cited: *Gowland v. De Faria*, 17 Ves. 34; *Hinchman v. Smith*, 3 Russ. 453; *Aldborough v. Trye*, 6 Cl. & Fin. 456; *Chesterfield v. Jeppson*, 2 Ves. sen. 125, 157; *King v. Hamlet*, 2 M. & K. 456, 480; *Shelly v. Nash*, 3 Madd. 252; *Headen v. Roher*, M'Cl. & Y. 89; *Potts v. Curtis*, Youngs, 543; *Bawtree v. Watson*, 3 Myl. & K. 339, 341.

See notes on this case, p. 448, ante.

# SET-OFF.

See *Debtor and Creditor*.

# SHIP.

**Providing cargo.**—*Injunction*.—A ship was chartered to proceed to such places on the west coast of Africa as the charterers should direct, and there load from their factor a full cargo of guano, and proceed to a port in the United Kingdom, to be paid at a certain freight per ton. The ship was directed to Ichaboe. The factor there (who was one of the charterers) endeavoured to provide a full cargo, but failed to procure more than a small quantity. The master of the ship, (who was also a part owner), after waiting 31 days, seeing no probability of obtaining a full cargo from the factor, applied himself to complete the cargo by his own exertions, and at his own expense, and finally succeeded in doing so, after having been 93 days at Ichaboe. *Held*, on motion for an injunction, that the charterers were not entitled to that part of the cargo which had been procured by the exertions of the master without the assistance of the factor, and which the master claimed to hold as the property of the owners, and not of the charterers. *Lidgett v. Williams*, 4 Hare, 456.

Cases cited: *Wells v. Horton*, 4 Bing. 140; *Fillieul v. Armstrong*, 7 Adol. & Ell. 557; *Freeman v. Taylor*, 8 Bing. 124; *Thompson v. Harelock*, 1 Camp. N. F. C. 527; *Puller v. Stainforth*, 11 East, 232; *Bell v. Fuller*, 2 Taunt. 299, per *Mansfield*, C. J.

And see *Injunctions*, 3, 4.

# SOLICITOR.

See *Vendor and Purchaser*, 2.

# SPECIFIC PERFORMANCE.

**Power of leasing.**—Under a marriage settlement tenant for life, with remainder to his first and other sons by his wife *F.*, in tail, with remainder to himself in fee, had power to grant leases for 99 years in possession, at the most improved rents, under an indenture of lease to be executed with certain formalities. Twenty-eight years after the marriage, the wife still living, and there being no issue of the marriage, the husband gave a bond conditioned for the granting a lease for 99 years, at a rent of 20l. per annum, upon the expiration of a subsisting lease. As soon as the subsisting lease determined, the obligee of the bond entered into

possession, and for some years paid a rent of 20l. *Held*, notwithstanding some evidence of inadequacy in the rent, that the representatives of the obligee were entitled to a decree for specific performance of the agreement contained in the bond. *Butler v. Powis*, 2 Coll. 156. See *Harnett v. Yeilding*, 2 Sch. and L. 549.

# SURVIVORSHIP.

See *Husband and Wife; Will*, 2.

# TENANT BY CURTESY.

1. *Equitable seisin.*—*Devise.*—Although the right of the husband as tenant by the curtesy of an equitable estate of the wife, may perhaps be excluded by a possession of the estate strictly adverse to the husband and wife, and to all other parties interested under the settlement during the whole period of coverture; yet the possession of the estate in conformity with the equitable interests of the *cestui que trusts*, for however short a time during the coverture, and after the interest of the wife has become vested in possession, will support the title of the husband as tenant by the curtesy.

The possession of the *cestui que trust*, under the trust of a settlement, is the possession of the trustee, and gives the trustee a seisin of the estate, which is not interrupted by the death of the *cestui que trust*, but immediately enures for the benefit of the person next entitled to the equitable interest; and notwithstanding the adverse possession of another party soon afterwards commenced, a court of equity cannot presume such adverse possession to have commenced so instantaneously on the death of the first *cestui que trust*, as wholly to exclude the equitable seisin of the parties next entitled to the beneficial interest.

A testator entitled in fee to some messuages and lands in *A.*, and entitled for life to other messuages and lands in *A.*, devised his messuages and lands in *A.* to his son, and charged his tenement in *A.*, occupied by *H.*, with certain legacies. The tenement occupied by *H.* was part of the property in *A.* to which the testator was only entitled for life. *Held*, that it was not to be inferred from the description as his own of the tenement in *A.*, occupied by *H.*, that the testator intended to describe and devise as his own the other property in *A.*, in which he had only an estate for life. *Parker v. Carter*, 4 Hare, 400.

Cases cited: *Sterling v. Penhington*, 7 Vin. Abr. tit. Curtesy, a. pl. 11 p. 150; *Dodson v. Hay*, 3 Bro. C. C. 404; *Sweetapple v. Bindon*, 3 Vern. 536; *Castborne v. Scarfe*, 1 Atk. 603; *S. C.* 7 Vin. Abr. tit. Curtesy, E. pl. 23, 156; *2 J. & W.* 194; *De Grey v. Richardson*, 3 Atk. 469; *Buckworth v. Thirkell*, 3 Bos. & Pul. 652, n.; *Hill v. Saunders*, 4 B. & C. 529; *Morgan v. Morgan*, 5 Madd. 408; *Doe d. Christmas v. Oliver*, 10 B. & C. 181; *Armstrong v. Wolsey*, 2 Wils. 19; *Lord Altham v. Earl of Anglesey*, Gilb. 16; *Roe d. Hamerton v. Mitton*, 2 Wils. 356; *Jefferys v. Jefferys*, Cr. & Ph. 138; *Burrell's case*, 6 Rep. 71 b.; *Clark v. Rutland*, Lane, 113; *Lewis v. Llewellyn*, T. & R. 104; *Napier v. Napier*, 1



Sim. 26; *Roake v. Denn*, 4 Bligh, N. S. 1; *Blommart v. Player*, 2 Sim. & Stu. 597; 6 Dow. 179; *Morrice v. Lougham*, 11 Sim. 266; S. C. 13 ib. 615; *Casborne v. Inglis*, 2 J. & W. 196; *Lord Grosvenor v. Bych*, 16 Ves. 394; *Doe d. Neale v. Samples*, 1 Adol. & Ell. 151.

**7. Adverse possession.**—If the coverture begins after an adverse possession has commenced, and terminates during the continuance of such adverse possession, or, if both the trustee and *cestui que* trust are disseised before the equitable estate of the wife begins, by a party claiming by a title paramount to the trust, who retains possession until after the death of the wife, the husband would not acquire any title as tenant by the curtesy. *Parker v. Carter*, 4 Hare, 416.

#### TENANT FOR LIFE.

**Quarries and mines.**—Tenant for life not entitled to get stone from quarries on the settled estates, (except for repairs, &c.) nor to open or work any mines of coal or minerals not opened or in work at the death of the testator. Tenant in tail entitled to the monies realized by the tenant for life from stone not used for repairs, and minerals from newly opened mines. *Ferrand v. Wilson*, 4 Hare, 398.

See *Exchange*; *Specific performance*; *Will*, 4.

#### TENANT IN TAIL.

See *Perpetuity*, 1.

#### TIMBER.

Timber, on an estate in strict settlement, if regarded as part of the inheritance, is yet not preserved from alienation during the infancy of the tenant in tail; and the settlor cannot super-add to the tenancy in tail a provision which would render the timber inalienable during such infancy. *Ferrand v. Wilson*, 4 Hare, 374. See *Ware v. Polhill*, 11 Ves. 257; *Duke of Marlborough v. Godolphin*, 1 Eden, 404.

And see *Perpetuity*, 1.

#### TITHES.

**Modus.**—*Decree without issue.*—To a bill by the rector for an account of tithes against the owners of the manor and lands in the parish, the defendants set up a modus of 13*l.* 6*s.* 8*d.* By the documents coming out of the possession of the defendants, it appeared that 13*l.* 6*s.* 8*d.*, and also 8*s.* 9*d.* (not pleaded) had been paid by the owner of the manor and lands, for different considerations expressed in the documents, and at different times of the year, from 1607 until 1823, when the then owners of the fee agreed to discontinue the money payments, and thenceforward to pay tithes in kind. *Held*, that in such a case, a court of equity would decree an account of the tithes without requiring the plaintiff to establish his right at law either in an issue or by an action.

That, in such a case, if, upon the evidence, the existence of the modus, as pleaded, were doubtful, a court of equity would direct an issue, and not leave the plaintiff to his action at law.

*Semble*, that the defendants were not bound

by the agreement between the rector and the last owners, but were at liberty to reimburse themselves of the tithes, so of an incumbrance on the estate, notwithstanding they had notice, at the time of their purchase, of the agreement between the last owners and the rector, and of the subsequent payment of tithes in kind. *Raine v. Cairns*, 4 Hare, 327.

Cases cited: *O'Connor v. Cooke*, 6 Ven. 665, 671, n.; S. C. 8 Ves. 555, 556; *Bullen v. Michel*, 4 Dow. 397; *Fisher v. Graves*, 1 M'Lell. & You. 363; 6 Bligh, N. S. 257; *Jos v. Hockley* 4 Price, 97; *Drake v. Smith*, 3 E. & Y. 886; *Chapman v. Smith*, 3 Gwill. 847; *Ashby v. Power*, ib. 1242; *Strong v. Denchfield*, 2 Y. & J. 585; *White v. Lisle*, 4 Madd. 214; *Beck v. Bree*, 1 Young. 221; *Driffeld v. Orrell*, 3 E. & Y. 934; *Knight v. The Marquis of Waterford*, 4 Y. & C. 283.

See notes on this case, p. 519, ante.

#### TITLE.

See *Injunction*, 2.

#### TRUSTEE.

**Right to a release.**—Trustee of stock, on transferring the stock to his *cestui que* trust, held, under the circumstances of the case, entitled to an acknowledgment by the *cestui que* trust of the stock being received in full of all demands, though not entitled to a release under seal. And, inasmuch as the *cestui que* trust declined to make the acknowledgment, the court directed a general administration account to be taken of the real and personal estate of the testator, from whose real and personal estate the stock was derived, although no account but a mere transfer of the stock was prayed by the bill, and no open unsettled account suggested by the answer. *Chadwick v. Heatley*, 2 Coll. 137.

**2. Appointment of new trustee.**—*Infant heir.*—*Mortgagor.*—Upon a petition by a mortgagor for the appointment of a new trustee in the room of the infant heir of a trustee for sale under a mortgage deed, the Vice-Chancellor *Knight Bruce*, in the absence of the mortgagor, refused the application. *In re Green*, 3 Coll. 91.

See *Perpetuity*; *Vender and Purchaser*; *Priority*.

#### USURY.

**Lien.**—*Real estate.*—*Lease.*—*Bankrupt.*—*A.* a builder, being equitable lessee of lands for a term of 99 years, for building purposes, and having received from *B.* certain advances of money for building, agreed that the houses should be made out to *B.*, and signed an acknowledgment to *B.* in these words:—"I hereby acknowledge that I have received from you, the several sums of, &c. on account of the eight houses which I am building for you. I agree to pay you rent, at the rate of eight per cent. from the date of such advance, and to take a lease of the houses upon the usual conditions, or find you a tenant, subject to your approval. I am to have the option of selling the houses, provided I repay you the amount advanced on the houses, and all rent due thereon to the day you assign the lease or leases to me or my no-

mined. A. and B. afterwards, by letter, requested the agents of the head landlord to make out the leases to B.; and by a subsequent document, signed by A. and B., and written and sent to C., a creditor of A., it was stated, that in case C.'s debt was not paid by a certain time, B. thereby undertook to hold the leases, subject to his claim upon A. for £—, and interest for advances made by him to A. for the building of the said houses, and C.'s demand should be satisfied: *Held*, that if, independently of the usury laws, these documents vested in B., any interest or lien upon the property, they were usurious and void: *Held*, also, that assuming they did not vest any such interest or lien in B., yet as he, by his answer to a bill filed against him by the assignees under A.'s bankruptcy, insisted that he had such an interest or lien, he was not entitled, as against the plaintiffs, to the leases.

A., a builder, being lessee of lands for terms of 70 years, for building purposes, signed an agreement in writing, whereby, in consideration of monies to be advanced to him by B. for building, he agreed to assign the leases to B., subject to the ground rents, and to the several conditions therein contained, and to take the underleases from B. (when the houses should be completed) for the whole of the terms, wanting ten days, at a rent that should amount to eight per cent. upon the money to be advanced, such rents to commence from the time of the respective advances. By a subsequent document signed by A., in which he acknowledged certain advances, and stated that he had built two shops, after repeating the agreement to pay B. rent at eight per cent. and to take under leases, he added—"It is also agreed that I am to have the privilege of selling the two shops, provided I repay you the amount advanced on the shops, and all interest due thereon to the day you assign the lease or leases to me or my nominee." *Held*, that these agreements were usurious.

If A., his necessities requiring an advance of 1,000*l.*, obtain it from B., upon a bargain, that in consideration of it, A., his executors and administrators, shall pay B., his executors and administrators, an annuity of 80*l.* per annum, for a term of 70 years, commencing immediately, the annuity to be secured by the covenant of A., binding himself personally, and after his death, his assets generally, the transaction is usurious and bad on that ground, unless upheld by those provisions of the legislature, which have recently, as to certain cases, repealed or relaxed the usury laws.

Assignees of bankrupt, who have entitled themselves to the declaration of a court of equity, that contracts entered into between the bankrupt and one of his creditors are usurious, are entitled to consequential relief, on the terms, not of paying to the creditor the amount of his advances, but of allowing him to prove under the fiat for the amount of these advances, with legal interest. *Belcher v. Varden*, 2 Coll. 162.

Cases cited: *Dea & Telford v. Chambers*, 4 Comp. 3; *Dee v. Gough*, 3 B. & Ald. 364;

*Chillingworth v. Chillingworth*, 8 Sim. 484; *Fordey v. Wightwick*, 1 Ross. & M. 45, 503; *Sedder v. Greenway*, 19 Ves. 413; *Ex parte Scrivener*, 3 Ves. & B. 14; *Hensfield v. Bellemont*, 9 Ves. 37, 84; *Hindle v. O'Brien*, 1 Tantt. 413; *Mathews v. Lewis*, 1 Anst. 7; *Gowland v. De Faria*, 17 Ves. 20; *Simpson v. Lord Howden*, 3 Myl. & Cr. 97; *Rex v. Drury*, 3 Lev. 7; *Doe d. Metcalf v. Brown*, Holt, N. P. C. 293; *Pike v. Ledwell*, 5 Esp. 184; *In re Nalsh*, 7 Bing. 130; *Gilpin v. Enderby*, 5 B. & Ald. 954; *Fordey v. Hordern*, Jac. 144; *Moore v. McKay*, Beatt. 222, 228; *Goodman v. Grieson*, 2 Ball & Beat. 274; *Williams v. Owen*, 12 Law J., N. S. Ch. 207.

#### VENDOR AND PURCHASER.

1. *Trustee*.—*Costs*.—Trustee of a term in trust for securing to a mortgagee in fee (with a power of sale) his mortgage money, and subject thereto in trust for the mortgagor, his heirs, &c. decreed, in a plain case, to pay the costs of a suit brought against him, to compel him to execute a deed for surrendering the term to a purchaser from the mortgagee. *Hampshire v. Bradley*, 2 Coll. 34. See *Poole v. Pass*, 1 Beav. 600.

2. *Mortgage*.—*Priority*.—*Solicitor*.—A solicitor took a mortgage in fee from a client, and entered into possession of the mortgaged premises. He afterwards transferred the mortgage to another client, and delivered to him the title deeds, but remained in possession as the visible owner of the property, paying interest on the mortgage money to the transferee. Afterwards, in January, 1841, the transferee, upon the application of the solicitor, delivered to him the title deeds (except the deeds of transfer) for the purpose of preparing an abstract for a proposed purchaser of the estate. The purchase was delayed some time, in consequence of a defect of title, but was completed in May, 1841, when the purchase money was paid to the solicitor, and the title deeds (with the exception before mentioned) were delivered to the purchaser, who was let into possession, without notice of the transferee's title. In July, 1842, the solicitor absconded, and then, for the first time, the purchaser had notice of the transferee's title. *Held*, that if the transferee had not, before July, 1842, notice of the payment of the purchase money to the solicitor, and had not authorized or assented to such payment, he was not to be postponed to the purchaser. *Stevens v. Stevens*, 2 Coll. 20.

Cases cited: *Evans v. Bicknell*, 6 Ves. 174; *Martinez v. Cooper*, 3 Ross. 198; *Peter v. Russell*, 1 Ex. Cs. Abr. 321; *Gilb. Eq. Rep.* 122; 2 Vern. 726; *Govett v. Richmond*, 7 Sim. 1; *Gregg v. Wells*, 10 Ad. & Ell. 90.

#### VOLUNTARY DEED.

1. *Consideration*.—*Bankruptcy*.—A deed of settlement, in form voluntary, but appearing from extrinsic evidence to have been made for valuable consideration, supported against creditors.

A person who was in loco parentis to a married woman, devised to her a rent charge for

her life, and bequeathed certain personal property to her for her separate use. The will being inoperative, both as to the real and personal estate, the heir at law and next of kin of the testator made a partial sacrifice of their interests in order to carry the testator's intentions into effect; the property given up by them being invested in the funds and afterwards settled upon the woman and her children. At the time of the investment the husband of the woman was insolvent in his circumstances, and about three months after the date of the settlement he became bankrupt. *Held*, that the settlement was for valuable consideration, and was good against the husband's creditors. *Pott v. Toddhunter*, 2 Coll. 76.

2. *Hair at law*.—*Semble*, the heir at law of the author of a voluntary deed cannot avoid the deed under 27 Elis. c. 4, by a conveyance for value. *Parker v. Carter*, 4 Hare, 409.

#### WILL.

1. *Equitable assets*.—A trader devised his real estate to a person, whom he also appointed his executor upon trusts for sale; and he, by his will, declared, that the monies arising from such sale should be deemed part of his personal estate; he then directed that his personal estate, which should be remaining after payment of his debts, should be collected, and the convertible part of it converted into money, and that all the monies arising from the said real and personal estates should be invested in the funds or on real securities. *Held*, that the real estates were equitable assets, for payment of the testator's debts. *Shakels v. Richardson*, 2 Coll. 31. See *Kidney v. Cousmaker*, 1 Ves. jun. 436; 2 Ves. jun. 267; *Gibbs v. Ougier*, 12 Ves. 413.

2. *Survivorship*.—Testator devised certain messuages to trustees upon trust, to pay the rents to his wife for her life, and after her decease he gave and devised the said messuages to the same trustees, upon trust to sell, &c., and apply the proceeds amongst all his the testator's nephews and nieces, children of his brothers A. and B., and his sister C., and the survivors and survivor of them, share and share alike, to be paid to them respectively as they attained the age of 21 years. The testator's wife survived him. *Held*, that the property was divisible amongst such only of the children of A., B., and C., as survived the widow. *Williams v. Tarrt*, 2 Coll. 85.

Cases cited: *Pope v. Whitcombe*, 3 Russ. 124; *Doe d. Long v. Prigg*, 8 B. & C. 231; *Leeming v. Sherratt*, 2 Hare, 14; *Taylor v. Beverley*, 1 Coll. 108.

3. *Publication*.—*Attestation*.—*Execution of power*.—A married woman having power under her marriage settlement to dispose of personal estate by a will to be signed and published by her in the presence of two or more credible witnesses, made her will in pursuance of the power, and signed her name at the foot of it. Then followed the signature of three witnesses, and below those signatures was a memorandum in the hand-writing of the testatrix, to the effect that the will had been signed and sealed

by her in the presence of the above three witnesses. Upon the examination of the witnesses after the death of the testatrix, two of them deposed to the testatrix having signed the will in the presence of all the witnesses, but the third stated her belief that the will had been signed before the witnesses entered the room. *Held*, that, coupling the memorandum with the testimony of the witnesses, there was sufficient evidence of signing in the presence of the witnesses, or two of them, to satisfy the requisition of the power in that respect. *Held*, also, that the testatrix calling the witnesses to attest her will, sealing it, and declaring it to be her act, (which circumstances were given in evidence,) thereby published her will within the meaning of the power. *Held*, further, that as no attestation clause was required by the power, the omission of any statement as to publication in the memorandum (considered as an attestation clause) was immaterial. *Held*, therefore, under all the circumstances of the case, that the will was a due execution of the power.

Where an attestation clause is not required, the mere circumstance that there is an attestation clause specifying certain things, does not exclude evidence that other things were done besides those which are attested. *Warren v. Postlethwaite*, 2 Coll. 108.

Cases cited: *Lempriere v. Valpy*, 5 Sim. 108; *Mackinley v. Sison*, 8 Sim. 561; *Doe d. Spilsbury v. Burdett*, 4 Adol. & Ell. 1; *McQueen v. Farquhar*, 11 Ves. 467; *George v. Reilly*, 2 Curt. 1; *Peate v. Ougley*, Com. 197; *Strode v. Perrier*, 1 Mod. 267; *Hoil v. Clark*, 3 Mod. 211; *Wallis v. Wallis*, 4 Burn's Ecc. Law, 100, (9th ed.); *Trimmer v. Jackson*, ib. 102; *Miller v. Brown*, 3 Hagg. 809; *Ward v. Swift*, 1 C. & M. 171; *Johnson v. Johnson*, 1 Cr. & M. 140; *Curtis v. Kemrick*, 3 M. & W. 461; *Simson v. Simson*, 4 Sim. 553; *Bartlett v. Ramsden*, Vin. Abr. Devise, n. 2 pl. 16; 7 Taunt. 355; 9 Adol. & Ell. 950; 3 Rep. 31, a; *Moodie v. Reid*, 7 Taunt. 551; *Brett v. Rigden*, Plowd. 343; *Batler and Baker's case*, 3 Rep. 31, b; *White v. Trustees of British Museum*, 6 Bing. 310; 4 B. & Ad. 14; *Forbes v. Gordon*, 3 Phill. 628; *Friswell v. Moore*, 3 Phill. 135; *Miller v. Brown*, 2 Hogg. 809; *Masterman v. Maberly*, ib. 247; *Allen v. Hill*, Glib. Eq. Rep. 280; *Keigwin v. Keigwin*, 3 Curt. 607, 610; *Burdett v. Spilsbury*, 10 Cl. & Fin. 340; 9 Ad. & Ell. 974; *Wright v. Wakefield*, 17 Ves. 434; *Jones v. Dale*, Sugd. Powers, vol. 1, p. 284, 7th edit.; *Pennant v. Kingcote*, Jur. vol. 7, p. 754; *Barnes v. Vincent*, Jur. vol. 2, p. 260.

4. *Inconsistent clauses*.—*Maintenance*.—*Tenant for life*.—Testator devised estates to trustees upon trust to pay certain annuities to his wife and other persons, with a direction, that during the life of his wife the surplus rents should be applied in discharge of incumbrances affecting the devised property, and subject to these trusts; he declared that the trustees should stand seised of the property, in trust for various persons (not in case at the testator's death) successively in tail, with remainder to the testator's niece for life, with a direction, that during her minority the rents

should be applied as after mentioned; and then followed a clause to the effect, that if any person beneficially entitled to the rents should be in his or her minority, an annual sum not exceeding 300*l.* should be applied out of the rents to the maintenance of that person, and that the residue of the rents should accumulate, and the accumulations be applied in the discharge of incumbrances: *Held*, upon the construction of these inconsistent clauses, and other parts of the will, that the testator's niece was not (at least, during the life of the testator's widow) entitled to any part of the rents for her maintenance during minority. *Williams v. Edwards*, 2 Coll. 176. See *Rees v. Watkinson*, 1 Ves. sen. 93; *Foljambe v. Willoughby*, 2 S. & S. 165; *Stopford v. Lord Canterbury*, 11 Sim. 82.

5. *Whether "legacies" includes annuities.*—Upon the construction of a will: *Held*, that the word "legacies," did not include annuities. *Cornfield v. Wyndham*, 2 Coll. 184.

Cases cited: *Shipperdon v. Tower*, 1 Y. & C. C. 441; *Rose v. Cunyngbame*, 13 Ves. 29; *Bibbey v. Perry*, 7 Ves. 534; *Swift v. Nash*, 2 Keen, 20; *Duke of Bolton v. Williams*, 4 Bro. C. C. 361, 376, 385; 2 Ves. J. 216.

6. *Accruing shares.*—*Issue of children.*—Upon the construction of a will: *Held*, that accruing shares of personal estate were not subject to the trusts declared of the original shares.

Testator bequeathed one moiety of his residuary personal estate to trustees, upon trust to pay the interest and dividends equally amongst such of his children as should be living at a certain period, for their lives; and after the death of any of them, upon trust to stand possessed of a proportionate share of the fund for the use of the issue of the child or children so dying, absolutely. "But in case of such child or children dying without leaving issue, then upon trust to stand possessed of the proportionate share of the child so dying, in trust for, and equally to be divided between and amongst my other children then living, and the issue of such of them as may then be dead, such issue, nevertheless, only taking the share there, his, or her parent would have taken if living." *H.*, one of the children of the testator, who was living at the period of distribution, died, leaving issue a daughter, who died without issue; afterwards, *W.* and *A.*, two other of the testator's children, died without issue: *Held*, that the daughter of *H.* took no interest in the shares of *W.* and *A.* *Macgregor v. Macgregor*, 2 Coll. 194. See *Eyre v. Marsden*, 2 Keen, 564; 4 Myl. & Cr. 381; *Croderer v. Stone*, 3 Russ. 217; *Mackell v. Winter*, 3 Ves. 536.

7. *Legacy to executor.*—*Examination of original will.*—Upon the construction of a will: *Held*, that a legacy was given to an executor, not in his character of executor, and that he did not lose the legacy by not proving and not acting under the will.

Original will of personality examined in order to arrive at the true construction of certain bequests. *Compton v. Bloxham*, 2 Coll. 201.

Cases cited: *Read v. Devaynes*, 3 Bro. C. C. 95; 2 Cox, 285; *Stackpoole v. Howell*, 13 Ves. 417; *Calvert v. Bebbon*, 4 Beav. 322; 5 Beav. 630; *Piggott v. Green*, 6 Sim. 72; *Cockrell v. Barber*, 2 Russ. 585; *Dix v. Read*, 1 S. & S. 257; *Griffiths v. Fruen*, 11 Sim. 202; *Christian v. Devereux*, 12 Sim. 264; *Milner v. Milner*, 1 Ves. sen. 106.

8. *Produce of sale.*—*Lapse to heir at law.*—Testator devised his real estates to his daughter for life, and after her death devised them to his executors, with a direction to sell them and divide the sum arising from the sale, amongst "my grandchildren that are living at my daughter's death, and by the present marriage, in the following manner:—I give and bequeath to my grandson *A.* one-fifth, to *B.* one-fourth, to *C.* one-fifth, and the other parts to be equally divided amongst the other children living at the death of my daughter by this present marriage." The testator died leaving his daughter his heiress at law, and also next of kin. She had at that time seven children, of whom *A. B.* and *C.* were three. *A.* and *B.* died in their mother's lifetime: *Held*, that their shares lapsed to their mother, as the testator's heir at law, as personal estate. *Hatfield v. Pryme*, 2 Coll. 204. See *Tunney v. Ward*, 1 Beav. 563; *Bain v. Lascher*, 11 Sim. 397.

9. *Derogation of absolute gift.*—Testator gave his daughter *A.* "2,000*l.* after marriage." In a subsequent part of the will was the following clause:—"As to my daughters, I trust that they will not dispose of themselves in marriage without consulting my executors, and getting their assistance in drawing up proper articles, to the intent that should any of them die without issue, then, on the decease of their respective husbands and themselves, their fortune to revert to their surviving brothers, share and share alike." The testator's daughter *A.* married, and died without leaving issue, in the lifetime of three of her brothers. The brothers afterwards died in the lifetime of the daughter's husband. *Held*, that the gift (if any) in derogation of the absolute gift of 2,000*l.* having failed, the gift remained absolute, and the husband was entitled to it: *Eaton v. Barker*, 2 Coll. 124.

Cases cited: *Knight v. Knight*, 3 Beav. 173; *Harrison v. Foreman*, 5 Ves. 207; *Sturges v. Pearson*, 4 Madd. 411; *Stonor v. Curwen*, 5 Sim. 264; *Joslin v. Hammond*, 3 Myl. & K. 110.

10. *Vested interests.*—Testator bequeathed the dividends of 10,000*l.* stock to his wife for her life, and after her decease he gave and bequeathed the principal unto and amongst *A.*, *B.*, *C.*, and *D.*, and all and every other the child and children of *N.*, that might be living at the decease of his said wife, to be transferred and paid to them respectively on their attaining the age of 21 years, with benefit of survivorship in case any of them should die under that age. *N.* never had any other children than those named in the will. They all attained 21, and died in the lifetime of the widow. *Held*, that they took vested interests in the

20,000*l.* stock: *Roberts v. Barber*, 2 Coll. 339.

Cases cited: *Denson v. Hawes*, AmbL. 276; *Sturgess v. Pearson*, 4 Madd. 411; *Biffingale v. Wills*, 3 Alt. 219; *Pope v. Whitcombe*, 3 Russ. 174.

### UNQUALIFIED PRACTITIONERS UNDER THE POOR REMOVAL BILL.

By the 15th section of this bill, the commissioners may authorise the board of guardians to appoint a paid officer for the purpose of attending to all matters relating to the settlement and removal of the poor, and the commissioners may make rules for regulating the mode in which removals and all proceedings relating thereto shall be conducted, and exercise the same powers as are given by the Poor Law Amendment Act, 5 W. 4, c. 76.

It thus appears, if we rightly understand the effect of this enactment, that instead of the clerks of boards of guardians being confined to proceedings at petty sessions, they may be authorised (though not admitted as solicitors) to act at the quarter sessions, notwithstanding the Attorneys' Act, 6 & 7 Vict. c. 73.

The practitioners who are interested in these proceedings should bestir themselves to set this right. We are sure that, as well the interest of the public, as the profession, is concerned in the appointment of persons duly qualified to perform the legal business connected with the execution of the act.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

##### DISMISSAL OF BILL.—COSTS.

*Scamble*, if a plaintiff who is served with a notice of dismissal of his bill for want of prosecution, obtains and serves an order to amend, (he being in time to obtain such an order,) and tenders a sufficient sum to pay the costs incurred in respect of the notice, he will not be liable to pay any further costs, if the motion is afterwards made.

The bill in this case was filed the 6th of June, and the answer of some of the defendants was, according to the last general orders, to be deemed sufficient on the 13th of November, and on their behalf, notice to dismiss, for want of prosecution, was given on the 17th of December. On the 19th of December, an order was obtained for leave to amend, which was served on the same day, and a tender alleged to have been made of 20*s.*, for the costs of pre-

paring and serving the notice, to dismiss which was refused.

Mr. Bramwell then moved, in pursuance of the notice, contending, first, that the plaintiffs were not entitled to an order to amend, and secondly, that even if the order to amend were regularly obtained, the costs of the motion must be paid. He cited *Walter v. Pockington*, 4 Bear. 124.

Mr. Lloyd, contra, said there were several defendants, and the time not having expired with regard to some, the order to amend was properly obtained according to the terms of the 68th Order of May, 1845, which distinguished cases of a single defendant from those where there are several defendants. The order, then, being regular, it was sufficient to tender the amount of the costs incurred, up to the time when the order to amend was served, and it could not be disputed that the amount tendered was sufficient to cover them.

The Master of the Rolls said, it might be an important question, whether, if an order to amend were regularly obtained, and sufficient costs were tendered to cover the expenses incurred up to the time of such tender, the parties who thus endeavoured to save the time of the court, and prevent further litigation, should be charged with the costs of bringing on such a motion. With regard to the question of the regularity of the order, his lordship said he would consider of it.

Mr. Lloyd, at the subsequent hearing of the case, admitted that no actual tender of costs had been made, and therefore, that the defendants were entitled to the costs of the motion.

*Lester v. Archdall*. January, 12, 1846.<sup>b</sup>

#### Queen's Bench Practice Court.

POOR.—APPEAL TO SESSION.—WHAT CONSTITUTES A "HEARING."

*The consideration of a notice of appeal is merely preliminary to a "hearing" of the appeal; therefore, if at the trial of an appeal notice be objected to, and the sessions hold it to be bad, and dismiss the appeal, this court will, if the decision be erroneous, award a mandamus to enter continuances and hear.*

On the 16th of April, 1845, an order was made by two justices of Surrey, upon the application of the parish officers of St. Mary Magdalen, Bermondsey, for the removal of certain paupers to the parish of St. Anne's, Westminster, and the order was served upon the officers of the last-mentioned parish on the following

<sup>a</sup> In *Piper v. Guttery*, 11 Sim. 282, it was held, that where a replication is filed after notice of motion to dismiss, and sufficient costs are tendered, and the motion is brought on by the defendant, he will be ordered to pay the costs of it.

<sup>b</sup> For the judgment of the court on the question of amendment see the report of this case, vol. 31, p. 416, *ante*.

day. On the 14th of June, notice and grounds of appeal for the next Surrey sessions, to be holden on the 1st of July, were duly served. At those sessions, accordingly, the appeal came on for trial; but after the appellants had procured service of the notice and grounds of appeal, by calling and examining the party who served them, the respondents objected to the sufficiency of the notice, and the justices, after considering the objection, held it to be fatal, and refused to hear, and dismissed the appeal. Under these circumstances, a rule had been obtained calling upon the justices of Surrey to shew cause why a mandamus should not issue, commanding them to enter continuances, and hear the said appeal; against which

*Baldwin* now showed cause, and contended that what had taken place amounted to a "hearing" of the appeal, just as much as if witnesses had been examined upon the merits, or the sessions had decided as to the sufficiency of the examinations; and that, such being the case, the decision of the sessions, whether right or wrong, could not be inquired into by this court. *Regina v. Kesteven*, 1 New Sess. Ca. 141; *Regina v. The West Riding*, id. 247.

*Parkley and Corner*, contra. Any discussion or adjudication upon the insufficiency of the notice of appeal is merely preliminary to entering upon a "hearing;" and, according to the statutes 9 Geo. 1, c. 7, s. 8, and 4 & 5 Will. 4, c. 76, s. 81, if the notice is held to be bad, any thing in the nature of a hearing would be illegal. The cases, with respect to the effect of an adjudication by the sessions, upon the sufficiency of the examinations, do not apply, for such an adjudication necessarily involves the whole merits of the appeal. *Espartero Ashworth*, 3 Q. B. 397, note; *Regina v. Saint Mary, Lambeth*, 2 New Sess. Ca. 36.

*Williams, J.*, after holding that the justices had wrongly decided against the validity of the notice of appeal,\* said that he had no doubt that a mandamus ought to go, but would take time to look into some recent cases.

*Cur. adv. vult.*

On Jan. 31, his lordship delivered judgment, saying:—I am perfectly satisfied that there was no "hearing" in the present case, and it has been the constant usage to grant a mandamus when an appeal has been wrongfully dismissed by the sessions upon a preliminary objection. *Roe v. Gloucestershire*, 1 B. & Ad. 1, is a strong case to that effect. There, after an appeal had been gone into upon the merits, and a witness called, a preliminary objection was taken by the counsel for the respondents, upon which the sessions dismissed the appeal. The point made in the present instance was then raised, and it was expressly decided, that when

the appellant is turned round upon a preliminary objection, which appears to this court to be untenable, a mandamus will lie to compel the sessions to enter continuances and hear. *Regina v. Kent*, 2 Q. B. 686, is to the same effect, and the provisions of the stat. 9 Geo. 1, c. 7, s. 8, render it quite clear that the notice must be gone into, before a "hearing" can take place; the rule must, therefore, be made absolute.

Rule absolute.

*Regina v. The Justices of Surrey*. Hilary Term, 1846.

### COMMON PLEAS.

WRIT OF SUMMONS.—IRREGULARITY IN SERVICE OF COPY.—WAIVER.—APPEARANCE. 4

*Service of a copy of a writ of summons was set aside as irregular, when one of several defendants was described in the copy as residing at Bristol, in the county of Gloucester.*

*The court held, also, that the irregularity was not waived, by an offer on the part of the other defendants to pay the amount claimed, the defendant in question not having appeared to the writ.*

A RULE had been obtained, calling upon the plaintiff to shew cause why the service of the copy of the writ of summons made upon one of the defendants, James Perrott, should not be set aside for irregularity. The objection to the validity of the service was, that the defendant, James Perrott, was described in the copy of the writ as residing at Bristol, in the county of Gloucester, whereas Bristol was a city and county of itself. It appeared from the affidavits, that James Perrott was served with the copy of the writ at Bristol, and more than 200 yards from the county of Gloucester.

*Byles*, Serjeant, in showing cause, submitted that the description of James Perrott's residence was sufficient, as Bristol, although not surrounded by the county of Gloucester, was partly situate within that county, and he referred to *Rippon v. Dawson*, 7 Dowl. 247.

*Tindal, C. J.*, observed that the service in question was not merely irregular, but unreal. Bristol could not be within the county of Gloucester, unless it were bodily within the county, which it was not.

*Byles* then contended that the irregularity of the service had been waived, as the attorney of the defendants had, since the writ was served, offered to pay the amount of the debt, and he cited *Holt v. Ede*, (1 Dowl. & L. 68,) and *Rance v. Knight*, (1 Bing. 132.)

*Channell*, Serjeant, in support of the rule, argued that as the defendant, James Perrott, had never appeared to the writ, he could not be bound by the act of the attorney for the other defendants.

*Per curiam.*

Rule absolute.

*Levi v. Perrott and others*. Michaelmas Term, Nov. 25, 1846.

\* The objection to the notice was that it did not appear to be given by the whole body of the churchwardens and overseers of the appellant parish, but by a majority only. His lordship held, that it sufficiently appeared to have been given by, or on behalf of, the whole body.

## Court of Bankruptcy.

AFFIDAVIT UNDER STAT. 1 &amp; 2 VICT. C. 110, s. 8.

*A commissioner has no authority to order an affidavit of debt, filed under the stat. 1 & 2 Vict. c. 110, s. 8. to be taken off the file, although such affidavit should be obviously imperfect and insufficient.*

A BANKER in Liverpool made an affidavit of debt, in which he swore, that J. Taylor, who carried on the business of a soap manufacturer, was indebted to the deponent in the sum of 1676*l.*, as the holder for value of a bill of exchange for that amount drawn by A. B. & Co., and accepted by J. Taylor, payable to the said A. B. & Co. or order, which bill was overdue and unpaid at the time of making the affidavit. This affidavit was filed in the Court of Bankruptcy, and on the 14th of March last, the debtor, Taylor, was personally served with a copy of the affidavit, and a notice in writing requiring immediate payment of the debt, pursuant to the stat. 1 & 2 Vict. c. 110, s. 8, within 21 days from the receipt of the copy, affidavit, and notice; Taylor gave notice to the creditor, that he should appear before the rotation commissioner at the court of bankruptcy, at a day and hour specified in the notice, and object to the affidavit of debt as defective.

At the time mentioned in the notice, Mr. Bagley appeared before Mr. Commissioner Fane, on behalf of the debtor, Taylor, and applied for an order that the affidavit filed in this case should be taken off the file. The affidavit was clearly defective, as it omitted to state that the bill of exchange had never been indorsed by A. B. & Co., or indeed by any person. If the bill was not indorsed the creditor had no title to sue upon it, and nothing could be intended in favour of an affidavit of debt. In *Lewis v. Gompertz*,\* it was held to be insufficient to state that a bill was *duly* indorsed, without stating by whom it was indorsed; here there was no statement that it had ever been indorsed.

Mr. Commissioner Fane, assuming that the affidavit is insufficient, what authority have I to order it to be struck off the file? Why should I look at the affidavit at all? Under the statute, the commissioner has no duty to discharge until the debtor presents a bond with two sureties. He is to "enter into a bond, in such sum, and with such two sufficient sureties," as I shall approve of. I may approve or disapprove of the sum or of the sureties, but I have always refused to notice any irregularity in the bonds, and I do not see that I am at liberty even to look at the affidavit. If the affidavit is bad and the creditor acts upon it, he will do so at his peril.

Mr. Bagley suggested, that the commissioner was bound to look at the affidavit, in order to determine in what sum the bond should be

given, as the amount of the alleged debt only appeared from the affidavit. He also cited *Ex parte Hall*, Mon. & Chit. 451, where one of the questions discussed was, whether an affidavit made under this provision of the statute, was properly sworn before a Master Extraordinary in Chancery. In the judgment delivered by Sir George Rose, in that case, it clearly appeared, that the learned judge contemplated that a commissioner of bankruptcy should look at the affidavit, to see if it were properly sworn. If it were competent for a commissioner to look at it for any purpose, it was submitted he might look at it to see if it were a sufficient affidavit of a debt, within the meaning of the statute. In the case last cited, it was held, that affidavits under this statute were to be considered as analogous to affidavits to hold to bail.

Mr. Commissioner Fane expressed a desire to see the case; *ex parte Hall*, cited at the bar; and in a subsequent part of that day stated, that he had read it, and although it certainly rather bore out the view for which it had been cited by counsel, and it might be inferred from it, that one of the judges of the Court of Review thought a commissioner might look at the affidavit of debt to see if it were properly sworn, yet that case had not altered his opinion, and could not be said to be an authority exactly in point. The impression on which he had always acted in this case, was in some degree borne out by the language used by the judge of the Court of Review in *ex parte Cheese*, 3 M. D. & De G. 79, where the court refused to take an affidavit off the file, observing, that even if it were taken off, it probably would not prevent the act of bankruptcy from being committed, as the affidavit was once filed under the statute. Upon all these considerations he felt it his duty to refuse the application.

*Ex parte Taylor.* April 3, 1846.

## EASTER TERM EXAMINATION.

THE examiners appointed for the examination of persons applying to be admitted attorneys, have fixed *Thursday*, the 30th day of *April*, instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, at ten o'clock precisely, to take the examination. The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left on or before Wednesday the 22nd instant, with the secretary.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally; but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the

\* 2 Cr. & J. 352; 1 Dowl. 319. See also *Mr. Tuggart v. Ellice*, 4 Bing. 114.

Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof.

*Law Society's Hall, 9th April, 1846.*

## CHANCERY SITTINGS.

*Master of the Rolls.*

*Easter Term, 1846.*

AT WESTMINSTER.

Wednesday April 15 Motions.

Thursday . . . 16 { Petitions—The unopposed first.

Friday . . . 17 {  
Saturday . . . 18 { Pleas, Demurrers, Causes,  
Monday . . . 20 { Further Directions, and  
Tuesday . . . 21 { Exceptions.  
Wednesday . . . 22 }

Thursday . . . 23 Motions.

Friday . . . 24 {  
Saturday . . . 25 { Pleas, Demurrers, Causes,  
Monday . . . 27 { Further Directions and  
Tuesday . . . 28 { Exceptions.  
Wednesday . . . 29 }

Thursday . . . 30 Motions.

Friday . . . May 1 {  
Saturday . . . 2 { Pleas, Demurrers, Causes,  
Monday . . . 4 { Further Directions, and  
Tuesday . . . 5 { Exceptions.  
Wednesday . . . 6 }

Thursday . . . 7 { Petitions—The unopposed first.

Friday . . . 8 Motions.

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

## CHANCERY CAUSE LISTS.

*Easter Term, 1846.*

*Lord Chancellor.*

APPEALS.

Day to be fixed	{ Strickland Ditto Ditto	{ Strickland Boynton Strickland	{ appeal
To fix a day.	{ Vandeleur Ladbroke	{ Blgrave Smith	{ appeal appeal pt. hd.
To fix a day.	{ Coote Minor Ditto Dalton Deeks Turner	{ Lowndes Minor Ditto Hayter Stanhope Newport	{ appeal 2 appeals suppl. suit appeal 3 appeals appeal
To fix a day.	{ Atterey-Gen.	{ Masters & Wardens, &c. of the City of Bristol.	{ appeal

Trulock	Robey	appeal
Younghusband	Gisborne	do.
Whitworth	Gangan	do.
Bush	Shipman	do.
Black	Chaytor	do.
{ Mitford	Reynolds exons. by order	
{ Johnson	Ditto fur. dirs. by order	
Thwaites	Foreman	appeal
Watts	Lord Eglington	do.
Curson	Belworthy	do.
Watson	Parker	do.
Dietrichson	Cabburn	do.
Bellamy	Sabine	do.
Attorney-Gen.	Malkin cause by order	
Johnson	Child	appeal
Kidd	North	do.
Dord	Wightwick	do.
Carmichael	Carmichael	do.
Hawkes	Howell	do.
Heming	Swinerton	do.
Trail	Bull	do.
Youde	Jones	do.
Wrightson	Macaulay	do.
Lawrence	Bowle cause by order	
Gompertz	Gompertz 3 causes appeal	
{ Morris	Howes	{ appeal
{ Horsman	Abbey	
Thomas	Blackman	do.
Bonds	Styman	do.
Jones	Morgan	do.
Cooper	Pitcher	do.
Salkeld	Johnson on eqy. read.	

*Vice-Chancellor of England.*

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

De Beauvoir v. De Beauvoir, dem.  
Hardy v. Hull.  
Duke of Leeds v. Earl Amherst.  
Bryon v. Twigg, 6 causes, fur. dirs. and costs.  
Blackwell v. Bryon, by order.  
Friswell v. King, fur. dirs. costs and petn.  
Attorney-Gen. v. Earl of Devon, cause and petn.  
Henderson v. Eason, exons.  
Terry v. Wachter.  
Simpson v. Holt, fur. dirs. and costs.  
Garrod v. Moor.  
{ Smale v. Bickford.  
{ Bickford v. Bickford. }  
Peacock v. Kernot.  
Morrison v. Watkins.  
Wright v. Barnwell, exons. and fur. dirs.  
Greenway v. Buchanan.  
Walton v. Morrill.  
Parker v. Hawkes, exons.  
Davison v. Bagley.  
Penny v. Turner.  
Giffard v. Withington.  
Daniel v. Hill.  
Insole v. Featherstonhaugh.  
Lane v. Durant, exons. and fur. dirs.  
Pocock v. Johnson.  
Cope v. Lewis.  
Evans v. Hunter.  
Attorney-Gen. v. Trevanion.  
Start v. Cooke.  
Blundell v. Gladstone, 4 causes, fur. dirs.  
Hodgkinson v. Barrow, fur. dirs. and costs.  
Colbourn v. Coling.  
Langton v. Langton, 2 causes.  
Gowar v. Bennett, fur. dirs.  
Hickson v. Smith, at def.'s request.  
Palmer v. Pattison fur. dirs. and costs.



Minster v. Wraith, fur. dirs. and cause.  
 Mason v. Wakeman, exons.  
 Hemming v. Spiers, exons.  
 Chambers v. Waters, exons.  
 Lord Beresford v. Archbishop of Armagh, fur.  
 dir. and costs.  
 Smith v. Robinson.  
 Foster v. Vernon, fur. dirs. and costs.  
 Johnstone v. Lumb, ditto.  
 Vais v. Sherwood, 7 causes, ditto.  
 Hallenden v. Wood, exons.  
 Branscomb v. Branscomb, fur. dirs. and costs.  
 Appleyard v. Owers.  
 Conquest v. Loughan.  
 Boag v. Robinson.  
 Whitcombe v. Deakins.  
 { Stammers v. Halliby, 3 causes, fur. dirs.  
 { Ditto v. Battye, by order,  
 Gray v. Gray, 3 causes, fur. dirs.  
 Dorville v. Wolf, fur. dirs. and costs.  
 Balch v. Hunt.  
 Bates v. Rickerby.  
 Rodgers v. Nowill.  
 Cotterell v. Homer.  
 Richards v. Patterson, fur. dirs. and costs.  
 Roush v. Downer ditto.  
 Bentons v. Beaton.  
 Hutchins v. Abagar.  
 { Cloake v. Rolfe, 3 causes.  
 { Brook v. Swaffer, suppl. bill.  
 Attorney-Gen. v. Smith, 3 causes, fur. dirs.  
 Brooke v. Rounthwaite.  
 Woodman v. Madgen, fur. dirs. and costs.  
 Jones v. Jones.  
 Bird v. Luskie.  
 Milne v. Parker.  
 Hawthorne v. Lydall.  
 Attorney-Gen. v. Pearson, exons. and fur. dirs.  
 Short, Cradock v. Piper, fur. dirs. and costs.  
 Kempson v. Abbott.  
 Fyson v. Addams.  
 Dawson v. Cheppell, fur. dirs. and costs.  
 Andrew v. Moore ditto.  
 Higham v. Howis ditto.  
 Wait v. Horton ditto.  
 Parulow v. Donaldson ditto.  
 Bryan v. Twigg ditto.  
 Shaffield v. Levy ditto.  
 Montague v. Gator.  
 Flight v. Bushby.  
 Groom v. Stinton.  
 Vallance v. Fennell.  
 Ford v. Westall.  
 Allen v. Knight.  
 Corbett v. Limbrick, fur. dirs. and costs.  
 Fermor v. Earl Pomfret, ditto.  
 Ward v. Ward, 2 causes.  
 Alsager v. Miller.  
 Leasbury v. Perks.  
 Ash v. Hele.  
 Baxter v. Abbott, fur. dirs. and costs.  
 Patterson v. Wilson, 2 causes.  
 Woods v. Woods, 5 causes.  
 Webb v. Gowar.  
 Short, Hicklin v. Barney, fur. dirs. and costs.  
 Dobson v. Lyall ditto.  
 Lander v. Kendall.  
 Bagshaw v. Macneil.  
 De Beauvoir v. De Beauvoir, fur. dirs.  
 Morris v. Wood.  
 Brale v. Warder, re-bg.  
 Jenkins v. Smith.  
 Jones v. Thomas.  
 Turner v. Simcock, fur. dirs. and costs.  
 Booth v. Lightfoot ditto.

### Vice-Chancellor Wright's Court.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.  
 Leonard v. Sander, dem.  
 To fix a day. Sutherland v. Cooke, Same v. Jackson, fur. dirs. and costs.  
 S. O., Halkes v. Halkes.  
 Goodwin v. Goswell, pt. hd.  
 Say v. Kensit, pt. hd.  
 Barfield v. Davis, pt. hd.  
 Attorney-General v. Clark.  
 Taylor v. Taylor.  
 Barker v. Harrison.  
 Dunning v. Hards.  
 Hodgkiss v. Hipkins.  
 Chalmers v. Watmough.  
 Cubley v. Pritchit.  
 Knight v. Greenwood.  
 Garmstone v. Gaunt.  
 Hall v. Austin.  
 { Disken v. Ward.  
 { Ward v. Dicken.  
 Davies v. Archer.  
 Jenkins v. Gower, fur. dirs. and cause.  
 Nichols v. Newman, 3 causes, fur. dirs. & costs.  
 Toombs v. Rock, fur. dirs. and costs.  
 Filder v. Bellingham ditto.  
 Monckton v. Woodcock, ditto.  
 Chilton v. Rogers.  
 Barrow v. Harrison.  
 Follett v. Wesley.  
 { Picart v. Bp. of Hereford.  
 { Underwood v. Morgan.  
 Eyre v. Green, exons.  
 Williams v. Bland.  
 Glover v. Cockerell.  
 Middleton v. Wolf.  
 Matchitt v. Palmer, fur. dirs. & costs.  
 Rowe v. Shuttleworth.  
 Ashton v. Dalston.  
 { Barham v. Dowager De Clifford fur. dirs.  
 { Earl of Clarendon v. Barham and costs.  
 Morrell v. Fisher.  
 17th April, Rowe v. Hardy.  
 18th April, Marsh v. Marsh.  
 Parker v. Morrell, 3 causes.  
 Watts v. Montgomery, fur. dirs. & costs.  
 Hanwell v. Denton ditto.  
 { Roberts v. Humphrey, 3 causes, do. and ptn.  
 { Hughes v. Rowland, reviver.  
 Holland v. King.  
 Caton v. Rideout.  
 Andre v. Andre.  
 Davies v. Price.  
 Glover v. Powell.  
 18th April, Browne v. Milne.  
 Wood v. Hardisty.  
 Moreson v. Pulley.  
 Dobinson v. Sledgdall.  
 { Taylor v. Ryland v. fur. dirs. and costs.  
 { Blower v. Ditto  
 18th April, Meads v. Whitmore.  
 Sanders v. Richards.  
 Attorney-Gen. v. Mayor, &c. of Newcastle-upon-Tyne.  
 Boileau v. Rudlin.  
 Hawthorne v. James, fur. dirs. and costs.  
 Pugh v. Benbow.  
 Wykes v. Higginbotham, fur. dirs. and costs.  
 Thomas v. Floud, exons.

### Vice-Chancellor Wright's Court.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.  
 To apply to L. C. Atkinson v. Boyce.

*S. O. Parr v. Bank of England.*  
*{ Parr v. Gylby }*  
*{ Ditto v. Parr }*  
*{ Ditto v. Gylby }*  
*Bell v. Bell.*  
*Cooper v. Turner, fur. dirs. and costs.*  
*Day v. Wells ditto.*  
*Trin. T., Hole v. Pearce.*  
*Cox v. Bernard.*  
*{ M<sup>c</sup>William v. M<sup>c</sup>William. }*  
*{ Ditto v. Geddes. }*  
*East v. East, fur. dirs. and costs.*  
*Phillips v. Meinertzhagen.*  
*Richardson v. Corbett, fur. dirs. and costs.*  
*Blythe v. Blythe.*  
*Hutton v. Hepworth.*  
*Williams v. Hiddesb.*  
*Beadman v. Beadman, exors. and fur. dirs.*  
*Steele v. Steele.*  
*Edgar v. Davis.*  
*20th April, Woods v. Woods.*  
*23rd April, Ranken v. Harwood.*  
*23rd April, Polo v. Harwood.*  
*Tindal v. Jertin, fur. dirs. and costs.*  
*4th May, Ward v. Key.*  
*27th April, Lancaster v. Jackson.*  
*Thomas v. Reynolda, exors.*  
*Short, Meek v. Carter.*  
*Short, Balls v. Kingsland.*  
*26th April, Preston v. Wilson.*  
*Rowland v. Mansel, fur. dirs. and costs.*  
*Short, Wadman v. Phillips ditto.*

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

Easter Term, 1846.

## NEW TRIALS.

Remaining undetermined at the end of the Sittings after Hilary Term, 1846.

Michaelmas Term, 1844.

Glamorgan.—Burgess v. Taff Vale Railway Co.

Hilary Term, 1845.

London.—Lowe v. Penn.

Easter Term, 1845.

Middlesex.—May and wife v. Burdett; The Queen v. Hon. E. Polham.

Surrey.—Dobson, Knt., and another v. Blackmore, the elder; Girdlestone v. M<sup>c</sup>Gowan, in replevin.

Bucks.—Rowles v. Senior and others; Bryant v. Jennings.

Cambridge.—Layton v. Hurry.

Chester.—Stewart v. Wilkinson.

Wills.—Lee v. Morrell.

Devon.—Doe d. Earl of Egremont v. Courteney; Doe d. Dayman v. Moore; Wood v. Hewett; Barratt v. Oliver; Doe several dams. of Molesworth, Bt. and others v. Sleoman and another; Tanner, executrix, &c. v. Moore.

Somerset.—Lambert v. Lyddon.

Northumberland.—Bolam v. Shaw; Davidson v. Reed.

Durham.—Ray v. Thompson; The Queen v. Great North of England Railway Co.; Hansell v. Hutton, Esq.

Park.—Doe d. Lord Downe v. Thompson; Lord Viscount Downe v. Thompson; Phillips v. Broadley; Petch and wife v. Lyon; Brown v. Ayre; Whitem v. Highingale and others; James v. Brook.

Lincoln.—Saffery v. Wray.

Leicester.—Massell v. Fleming; Doe d. Bowley and others, Churchwardens, &c. v. Barnes.

Warwick.—Blakesley v. Smallwood and another.

Stafford.—Inskcep v. Harper and others.

Salop.—Stokes v. Boycott, Esq., in replevin.

Monmouth.—Prickett v. Gratrex; Williams v. Stiven.

Gloucester.—Clutterbuck v. Hulls.

Glamorgan.—Doe d. Simpson v. John.

Tried during Easter Term, 1845.

Middlesex.—Hopkins v. Richardson.

Trinity Term, 1845.

Middlesex.—Rich v. Dix; Curling v. Shepherd.

London.—Sheringham v. Collins; Day, by her next friend, v. Edwards; Sedgwick v. Hamman.

Tried during Trinity Term, 1845.

Middlesex.—Paull and wife, executrix, &c. v. Simpson; Mitchell v. King.

Michaelmas Term, 1845.

Middlesex.—Wimberley v. Hunt; Baker v. Drew; The Queen v. Thornton; The Queen v. Gompertz; Gibbons v. Hunter and another; Goode v. Cookman; Ford v. Beech; Jacobs v. Dawes.

London.—Buisson v. Staunton; Brown v. Harmer; Welsh and another v. Reed; Marrieta v. Oldfield; Nicoll v. Gillen.

Stafford.—Skerratt v. Christie and another; Biddestone and others v. Burdett.

Essex.—Rogers v. Kesney; Doe d. Goody v. Carter.

Surrey.—Gillett v. Bullivant; Yocell v. Cross; Archer v. Smyth; Doe d. Pennington and others, v. Barrell and another.

Northampton.—Sutton, a pauper, v. Maguire; Taylor v. Clay and another.

Cardiff.—Doe d. Lord v. Kingsbury.

Carmarthen.—Protheroe v. Jones; Chambers, Esq. v. Thomas and another in replevin; Same v. Same; Same v. Same.

Cardigan.—Doe d. Jenkins and another v. Davies and others.

Brecon.—Maybery v. Mansfield.

York.—Smith v. Smith; Marshall v. Powell and another; Spence, a pauper, v. Meynell, Esq., and another; Doe d. Norton v. Norton; Bainbridge v. Bourne, the younger; Wilkinson v. J. Haygarth; Same v. Haygarth; Bainbridge v. Lax and others.

Durham.—Smith v. Hopper and others; Reed v. Same; Hinde v. Raine and another.

Devon.—Doe d. Earl of Egremont and another v. Sydenham, clk.; Mayor, &c. Exeter v. Harvey and another; Damerell v. Protheroe and others; Schank v. Sweetland.

Cornwall.—Marshall, Esq. v. Hicks.

Somerset.—Doe d. Earl of Egremont v. Williams and another.

Bristol.—Addison v. Gibson.

Hilary Term, 1846.

Middlesex.—Page v. Hatchett; Doe d. Tebbutt and others v. Brent and others; Hunter v. Caldwell.

London.—White and another v. Bursley; Bond and another v. Nurse and another; Turner v. Hambley; The Queen v. Kensington, sued with another.

Tried during Hilary Term.

Middlesex.—Loveless v. Frankslyn.

## SPECIAL CASES AND DEMURRERS.

Easter Term, 1846.

Oliverson and another v. Brightman and others special case.

Bold and another v. Rotherham, special case.

Scott v. Hartley, dem.

Dale v. Pollard and others, special case.

Pollitt v. Forrest and others, error.

Stephenson, executor, &c. v. Newman, ~~error~~ dem.

Barber and others, v. Butcher, dem.

Swallow v. Ridgway, dem.

Churley v. Boycutt the younger, dem.

Scadding v. Lorant, special case.

Vine and another v. Bird, dem.

Rigby v. Weymouth, dem.

Vine and another v. Bird, dem.

Higgins v. Thomas, dem.

Garrett v. Dryden, Bt., dem.

Taylor v. Brook, dem.

Giles v. Giles, dem.

Gray v. Field and others, dem.

Windle v. Graves, dem.

Rogers v. Grazebrook, dem.

Dolby v. Remington and another, dem.

Pennell and others, assignees, v. Rhodes and another, special case.

Springett v. Morrell and another, dem.

Robinson v. Hawksford, special case.

Flenden v. Bunbury, special case.

Sharp v. Watts, dem.

Whitaker v. Richards, dem.

Frost v. Lloyd and another, dem.

Cook v. M'Pherson, error.

Wilkinson v. Gaston, dem.

Westley v. Krombholz and others, special case.

Chamberlain v. Hammond, dem.

Scadding v. Eyles, dem.

Knight and others v. Gaunt, dem.

Chamberlain v. Hammond, dem.

Lawton v. Hickman, dem.

Day v. Harrington, dem.

Sharps v. Bluck, clk., dem.

Huntley v. Russell and another, dem.

Mitchell v. Johnson, dem.

Bryant and another v. Holmes, dem.

Nind v. Parry, dem.

Ranger v. Same, dem.

Loonie v. Oldfield, dem.

Herbert v. Booth and others, dem.

## PROCEEDINGS IN PARLIAMENT.

## House of Lords.

## NEW BILLS.

Real Property Conveyance.—For 2nd reading. Lord Brougham.

Abolition of Deodands.—For 2nd reading. Lord Campbell.

Compensation for Accidental Deaths.—For 2nd reading. Lord Campbell.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—Waiting for Report of Committee. See the bill, p. 354, ante. Lord Dacre.

Duties of Constables, &amp;c.—In Select Committee. See the bill, p. 311, ante. Duke of Richmond.

Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor. See the bill, p. 452, ante.

Punishment for deterring Prosecutors, Witnesses, &amp;c.—In Committee. See the bill, p. 472, ante. Lord Denman.

Metropolitan Buildings.—For 2nd reading. See the bill, p. 426, ante.

Annual Indemnity.—Passed.

## CHARITABLE TRUSTS.

Several further petitions have been presented praying to be heard by counsel against this bill.

We beg to repeat our observations on this measure, at p. 469, ante.

## PRIVATE BILLS.

The last day for presenting petitions to the House of Lords for private bills (not relating to railways) is Tuesday the 21st of April; and the last day for the Judges' Report, Thursday the 10th June.

\* \* This House adjourned to Tuesday, 21st.

## House of Commons.

## NEW BILLS.

Administration of Criminal Justice.—In committee.

Insolvent Debtors, (India). In committee.

Bankruptcy and Insolvency.—Mr. Hawes.

Parliamentary Elections and Franchise.—Sir De Lacy Evans.

Roman Catholics' Relief.—In Committee. See the bill, p. 403, ante. Mr. Watson.

Small Debt Courts:

Somerset,

Northampton,

Birkenhead,

St. Austell. For 2nd reading.

Friendly Societies.—In Committee. Mr. T. S. Duncombe.

Poor Removal.—For 2nd reading. Sir J. Graham. See analysis of the bill, p. 473, ante.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &amp;c. Mr. T. S. Duncombe.

Metropolis Improvements. Mr. Macmillan.

Railway Deposits.—Re-committed.

## LEGAL EDUCATION.

The motion of Mr. Wyse for improving the means of Legal Education in Ireland was ably supported by him, but the house was counted out. We shall give an early report of the speech.

\* \* The House adjourned to Friday the 17th.

## THE EDITOR'S LETTER BOX.

We shall take an early opportunity of compiling an index to the principal matters contained in the last ten volumes, on a plan which, we trust, will render easily accessible the several articles of permanent interest to professional readers.

The letters of a "Country Attorney and Solicitor," G. Z.; and "A Constant Reader," shall be attended to.

# The Legal Observer.

SATURDAY, APRIL 18, 1846.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agimus.”

HORAT.

## COMPULSORY ACTS OF BANKRUPTCY.

### CONSTRUCTION OF BOND GIVEN UNDER STAT. 1 & 2 VICT. C. 110, S. 8.

In consequence, we presume, of the absence of confidence in the commercial community, engendered by the prevalence of excessive and illegitimate speculation, many creditors have lately felt the necessity of endeavouring to protect themselves by resorting to those measures by which they either obtain security for their debts, or force the debtor into that position in which his property becomes distributable equally amongst his creditors, under the provisions of the bankrupt laws. It is hardly necessary to remind the reader, that in order to entitle a creditor to sue out a fiat in bankruptcy, three things must combine: the debtor must be a trader within the meaning of the bankrupt laws; he must have contracted a certain amount of debt;<sup>\*</sup> and he must have committed an act of bankruptcy. To compel the trader to commit an act of bankruptcy is often a matter of considerable importance as well as difficulty, when the object of the trader is to delay the issuing of the fiat. The statute, 1 & 2 Vict. c. 110, s. 8, and 5 & 6 Vict. c. 122, prescribe distinct courses of proceeding by which a trader debtor may be forced into an act of bankruptcy. Under the stat. 6 Geo. 4, c. 16, a person arrested and lying in gaol twenty-one days under a

capias founded on an affidavit of debt, committed an act of bankruptcy. The stat. 1 & 2 Vict. c. 110, abolished arrest for debt on mesne process, and rendered the act of bankruptcy by lying in prison of comparatively unfrequent recurrence. It was deemed just, however, that a creditor should not be deprived of the means of enforcing a distribution of the property of his debtor, and therefore it was enacted, that a creditor to a certain specified amount, filing an affidavit debt, and serving the trader debtor with a copy thereof, and a notice requiring immediate payment of the debt, should, after such service, obtain from the debtor payment or security, or else the debtor should enter into a bond with two sufficient sureties, to pay such sum as should be recovered in any action brought for recovery of the original debt, or else to render himself to prison; and if the debtor neglects to pay, secure, or enter into any such bond for twenty-one days after service of the copy affidavit and notice, the statute declares, that the trader shall be deemed to have committed an act of bankruptcy, provided a fiat be issued within two calendar months from the filing of the affidavit in the court of bankruptcy.

The proceeding under the stat. 5 & 6 Vict. c. 122, is more complicated. By sect. 11 of that act, the creditor of a trader filing an affidavit in the form specified by the act, and delivering personally to the trader a written account of the particulars of his demand, with a notice requiring immediate payment, may obtain a summons from the court of bankruptcy calling upon the trader debtor to admit the demand of the creditor, or to depose on oath that he believes he has a good defence to the demand. If the trader debtor does not appear according to the exigency of the sum-

\* By 5 & 6 Vict. c. 122, s. 9, the single debt of a creditor petitioning, or of two more being partners, must amount to 50*l.* or upwards; the debt of two persons (not partners) petitioning must be 70*l.*; and the debt of three or more creditors petitioning must amount to 100*l.* or upwards.

mons, and admit the demand, or depose to a good defence, and does not within fourteen days, pay, secure, or compound for such demand, or give a bond with two sufficient sureties, he is deemed to have committed an act of bankruptcy on the fifteenth day after the service of the summons. So, if the trader appears and admits the demand, but does not within fourteen days pay, tender, secure, or compound for such demand, he is deemed to have committed an act of bankruptcy on the fifteenth day. And a like result follows, where a trader appears, admits part of a demand, and does not depose to a good defence to the residue, or does not pay, tender, secure, or compound for the residue, provided in all those cases that a fiat is issued within two months of filing the affidavit.

The mode of proceeding under the two statutes, it will be observed, is essentially different in many respects, and it seems for some time to have been thought that the act of bankruptcy founded on the stat. 1 & 2 Vict. c. 110, s. 8, was superseded by the acts of bankruptcy under the 5 & 6 Vict. c. 122.<sup>b</sup> This impression, however, is now considered erroneous, and in fact, the provisions of both those statutes are, at this particular period, in constant and extensive operation, the one statute or the other being selected at the discretion of the creditor. The provisions of the statute 5 & 6 Vict. c. 122, are more extensive, and at first sight appear to be more beneficial to creditors than those of the earlier act, as the period for paying or compounding is fourteen days instead of twenty one; but the facility which the later act affords to a debtor who is not embarrassed with any peculiar delicacy of conscience, to swear that he *believes* he has a good defence, is so frequently availed of, and the number of cases in which summonses are dismissed with costs,<sup>c</sup> for non-compliance with some of the particulars required by the rules and orders of the bankruptcy court, is so considerable, that the statute 1 & 2 Vict. c. 110, is in practice most frequently resorted to by the most experienced practitioners.

The cases in which the courts of common law have been called upon to put a

construction upon any of the provisions which have been referred to, are *not* numerous; but in a late case,<sup>d</sup> the subject of bonds given under the stat. 1 & 2 Vict. c. 110, s. 8, was much discussed in the Court of Common Pleas, and more than one practical point decided. In that case, the plaintiff, Hinton, having filed an affidavit in the court of bankruptcy under the stat. 1 & 2 Vict. c. 110, to the effect, that a debt of 1650*l.* was due to him by the defendant and his partners, who were traders within the bankrupt laws, two persons named Bridges and Ballantine, joined the defendant and his copartners in a bond as sureties under the statute; the condition of such bond being, that the obligors would pay the plaintiff such sum or sums as should be recovered in any action or actions which then had been, or should be, brought for the recovery of the alleged debt, with costs, or that the defendant and his co-debtors should render themselves, after judgment had been recovered, according to the practice of the court, or within such time as the court or a judge should direct. Judgment having been recovered on the original debt in the Court of Exchequer, Coleridge, J., as the vacation judge, made an order that the defendant and his copartners should render themselves to the Queen's prison within ten days, but another order was afterwards obtained from Cresswell, J., enlarging the time for the render of the defendant and his co-debtors until the 5th day of Michaelmas Term then next ensuing, without prejudice to the right of the bondsmen to render their principals in the meantime, or to the right of the plaintiff to treat the bond as forfeited. On the 4th Nov. the defendant obtained a rule in the Exchequer, calling on the plaintiff to show cause why the order of Coleridge, J., and all proceedings thereon should not be set aside with costs, or why the defendants should not have a fortnight after the rule was disposed of to render in discharge of their bail. Within the time given by the last-mentioned rule, the defendant Acraman and his co-debtors rendered themselves, a fiat in bankruptcy having previously issued against them.

To a declaration on the bond, several pleas were pleaded, which afterwards became the subject of demurrer, upon which, in addition to some minor points, the Court of Common Pleas decided two questions of considerable importance, the one as

NEW & FEE APP. BANK. L. 10th edition, p. 73, Reports Cases, 2 Mon. D. & De G. 79.

<sup>c</sup> See the remarks of one of the commissioners, in re *Farne*, Leg. Obs. original reports, p. 466, ante.

<sup>d</sup> *Hinton v. Acraman*, 15 Law Jour. 52; *E. P.*

matter of practice, and the second as a question of bankruptcy law.

After the recovery of his judgment, and before obtaining the order of *Coleridge, J.*, for the defendants to render, the plaintiff had not sued out a writ of *capias ad satisfaciendum* against the principal obligors, and this circumstance was the subject of a plea, which the court was of opinion afforded a good answer to the action. The judgment of the court in this respect proceeded on the ground, that as the bond directed to be given by the statute 1 & 2 Vict. c. 110, was evidently framed in analogy to, and nearly in the same terms, as a recognizance of bail, there was no reason to doubt they were intended to bear the same sense, and that the render ought to be when the plaintiff in the original action had signified his intention of suing out execution against the body of his debtor by issuing a *capias ad satisfaciendum*. As no such writ had been sued out in this case, the defendant was not bound to render.\*

It was also set up as a further answer to the action, that after the making of the bond the defendant had obtained a certificate in bankruptcy. In deciding on the validity of this plea, the Chief Justice, pronouncing the judgment of the court, observed, that although the original debt was undoubtedly barred by the certificate, it did not follow that a bond given to secure the payment of the debt was also barred.<sup>1</sup> By the 6 G. 4, c. 16, s. 136, the certificate was a bar to all debts and demands proveable against the bankrupt. The question was, whether the bond was proveable under the fiat? By 6 G. 4, c. 16, sect. 51, persons giving credit to the bankrupt on any bill, bond, note, &c., not payable when the bankrupt committed an act of bankruptcy, were entitled to prove, as if the same was payable presently, but it was decided upon a similar provision in a former statute,<sup>2</sup> that a bond conditioned for the payment of money on the happening of an event at a future uncertain period could not be proved.<sup>3</sup> In the present case it was not only uncertain when a debt would be due on the bond, but whether a

debt would ever become due, as it was uncertain whether the condition of the bond would be broken. The debt, therefore, was not proveable under the 51st section. But it was pressed on the court, that the 56th section provided, that if a bankrupt, before the fiat, contracted a debt payable on a contingency which had not happened before the issuing of such fiat, the creditor may apply to the commissioner of bankrupt to set a value on such debt, and be admitted to prove for the value so ascertained. In the construction of this section, a distinction had been taken between contingent liabilities which may never become debts, and debts payable on a contingency, and it was held that the latter only were proveable.<sup>4</sup> The present was not the case of a contingent debt, but of a contingent liability. When the fiat issued it was uncertain whether any debt would arise upon the bond, for the liability would not become a debt, unless the condition of the bond was broken. Upon these considerations the court determined, that the plea setting up the certificate as a bar to an action on the bond was a bad plea, and gave judgment accordingly.

## NOTES ON EQUITY.

DEED OF SETTLEMENT. — EX FACIE VOLUNTARY.—IMPEACHED BY CREDITORS.  
—BUT UPHeld BY EXTRINSIC EVIDENCE.

VOLUNTARY settlements, that is to say, settlements not founded upon valuable consideration, are, of course, inoperative against creditors, for the law will not permit a man to be generous at the expense of justice. Hence the objection to a gratuitous deed of gift that the grantor was insolvent at the period of its date, is necessarily fatal to the instrument, so far as creditors are concerned. But a deed *ex facie* and in form voluntary may be proved *extrinsically* to have been made for valuable consideration; and in that case it will be supported against creditors. A case of this complexion is reported by Mr. Collier, in his last number of Vice-Chancellor Knight Bruce's Decisions,—that of *Pott v. Todd-hunter*,<sup>a</sup> where it appeared that by a post-nuptial deed, dated the 8th June, 1841, a sum of 3310l. 6s. 7d. three per cent con-

\* Citing *Sandon v. Proctor*, 7 B. & C. 800; *South v. Griffith*, Cro. Car. 345; *Weddall v. The Manuscriptors of Jocar*, 10 Mod.; *Wilmore v. Clerk*, 1 Ld. Ray. 156.

<sup>1</sup> Citing *Jameson v. Campbell*, 5 B. & Al. 250. s. 7 Geo. 1, c. 1, s. 1.

<sup>2</sup> *Espartero Barker*, 9 Ves. 110.

<sup>a</sup> *Espartero Marshall*, 1 Mon. & Ayr. 146, cited by *Erskine, J.*, with approbation in *Abbott v. Hicks*, 5 Bing. N. C. 578.

<sup>3</sup> 2 Coll. 76.

sole, standing in the name of these trustees, was, in consideration of the love and affection which the husband bore to his wife, declared to be vested in them upon trust to pay the dividends to the wife to her separate use for life, and after her death to the husband for life, and after the death of the survivor of them, in trust, as to the capital fund, for the children of the marriage.

Both at and before the execution of this deed the husband was insolvent in his circumstances. The wife died in 1844, leaving two infant children. In 1842 a fiat in bankruptcy issued against the husband, under which the plaintiffs were chosen as signees, and the object of the bill filed by them was to set aside the settlement of the 8th June, 1841, and this on the ground that it was voluntary, which for anything appearing to the contrary on the face of the instrument, it certainly was. But there were collateral circumstances in the case which induced the court to support the deed. Thus it appeared that the wife had been the adopted child of an old bachelor, who had devised to her a rent charge for her life, and bequeathed certain personal property to her for her separate use. His will turned out to be inoperative both as to the real and personal estate; whereupon the heir at law and next of kin of the testator very handsomely made a partial sacrifice of their interests, in order to carry his intentions into effect. The result of this concession was, that a sum of 3,000*l.* procured from the estate of the testator, was in August, 1840, invested in the purchase of the above 3,810*l.* 6*s.* 7*d.* three per cent consols, and consequently, the deed sought to be set aside, was in fact, a deed executed by the husband, in pursuance of an express agreement with the heir and next of kin of the testator, that he (the husband) should settle the stock as a provision for his wife and her children.

The case, under these circumstances, was so clear that the defendant's counsel were stopped by the court; the Vice-Chancellor, observing, that the agreement was unquestionably one for valuable consideration. "The mere circumstance," his Honor remarked, "that the deed did not represent the transaction as otherwise than voluntary, was nothing. A deed apparently voluntary may be supported by extrinsic evidence showing a contract for value, and such evidence, he held, appeared abundantly in the present case."

## POINTS IN COMMON LAW.

THE INDORESE OF A BILL OF LADING CANNOT MAINTAIN ANY ACTION ON IT, IN HIS OWN NAME.

It is a well established principle of the law of England, that a bill of lading is not transferable, and the only exception to this rule is one founded on the custom of merchants with regard to bills of exchange and promissory notes, in which actions are every day brought by indorsees in their own names. An unsuccessful attempt was made in a late case to extend the exception to the case of a bill of lading, chiefly upon the authority of a dictum which fell from *Justice Gurney* in the well known case of *Richardson v. Anderson*. The learned judge was reported in that case to have said, "The assignee of a bill of lading stands to the indorsee as the instrument is in its nature transferable; in this respect, therefore, this is similar to the case of a bill of exchange." In *Thompson v. Donaghy*, the plaintiffs declared in assumpsit as the indorsees of a bill of lading signed by the defendants, on the ground, that the defendants had not delivered the goods which formed the subject-matter of the bill of lading. The question was whether the action could be maintained?

The Court of Exchequer was clearly of opinion, that there was no authority to show that a bill of lading was transferable by the custom of merchants; and to enable a party to bring an action on a bill of lading was very different from a bill of exchange. It was quite true that the indorsement of a bill of lading for valuable consideration transferred the property in the goods, but a bill of exchange was a continuing contract to pay the sum of money specified in it. In operation a bill of lading might be said to be negotiable—it was transferable from hand to hand, and passed the property in the goods mentioned in it, but it did not transfer the contract, and therefore could not be said to be negotiable like a bill of exchange. As there was no authority for the maintenance of such an action, and it was contrary to general principle, the court directed a nonsuit to be entered.

*Thompson and another v. Donaghy*, and another, 14 Mees & W. 403.

2 Term R. 71. See also *Barkley v. Watling*, 7 Ad. and El. 39; 2 Nev. and P. 178.

WHO MAY BE SUED AS ACCEPTOR OF A BILL OF EXCHANGE.

In an action of assumpsit by the indorsee against the acceptor of a bill of exchange, with a plea denying the acceptance, upon the production of the instrument declared upon, it appeared to be in the following terms:

"London, 8th March 1838. Twelve months after date pay to me or to my order, of £100, value received, John Hart, Addressed to Mr. John Hart, and across the face of the instrument was written, 'Accepted, H. J. Clarke, payable at 319, Strand.' The question was, whether an action was maintainable upon this instrument against Clarke as the acceptor?"

On the part of the defendant, it was submitted that the instrument produced was not a bill of exchange, as the drawer addressed himself; it more nearly resembled a promissory note; but at all events, the defendant was not liable as acceptor, as he was not called upon by the instrument to accept. On the other hand, it was urged, that the defendant, Clarke, by his acceptance, was estopped from disputing his own character or the nature of the instrument.

The Court of Queen's Bench thought the safest course was to adhere to the mercantile rules, that an acceptance could be made only by the party addressed or for his honour. Here, the last was not pretended, and the first could not be presumed. There was no authority, either in the English law or the general law merchant, for holding a party to be liable as acceptor upon a bill addressed to another. Lord Ellenborough treated an acceptance by a party not addressed, as "contrary to the usage and custom of merchants." The argument that the defendant was estopped could not be supported, where the instrument showed on its face that he could not be the acceptor. On these considerations the judgment was for the defendant.

#### DAMAGES RECOVERABLE IN AN ACTION ON A REPLEVIN BOND.

In the note on *Gainsford v. Griffith*,\* Mr. Serjeant Williams states the doctrine generally, that "both at law and in equity, the obligee cannot recover more damages

against the obligor for a breach of the condition of the bond, than the amount of the penalty and costs; for the bond ascertains the extent of the damage by consent of the parties, and therefore, if a bond be conditioned for performance of any act, and the obligee, by reason of the obligor's non-performance, sustains a damage far exceeding the amount of the penalty, yet he can only recover to the extent of the penalty and costs."

The soundness of this doctrine was questioned, but maintained in a late case in the Court of Queen's Bench, where an action was brought by the assignee of the sheriff on a replevin bond, against the sureties. The penalty in a replevin bond is double the value of the goods distrained. In this instance it was only 18*l.* 1*s.*, whilst the plaintiff's costs in the replevin suit were 160*l.* *Pallesen, J.*, made an order at chambers, that upon payment of the penalty of the bond, on which the action was brought, together with the costs of the action on the bond, all proceedings should be stayed.

The plaintiff appealed to the court to set aside the order so made, upon the grounds that a judge at chambers had no jurisdiction to make such an order, and that the court had power to make the sureties pay damages beyond the penalty, that being merely a security. *Lord Lonsdale v. Church*<sup>†</sup> was cited.

The Court of Queen's Bench thought no distinction existed between replevin bonds and others, and that it would be creating a doubt where none really existed to grant any rule in this case. The case cited was overruled on the point discussed, and the general doctrine correctly stated in the note referred to in Saunders. The order made at chambers was therefore affirmed by the court.

#### SCOTTISH MERCANTILE LAW AND PRACTICE.

##### No. 6.

#### EFFECT UPON SCOTTISH INTERESTS OF ACTS OF PARLIAMENT RELATING TO ENGLISH BANKRUPTCY AND INSOLVENCY.

1. *Effect upon Scottish Interests of the Act for winding up the affairs of Joint-Stock Companies.*

\* 2 Term R. 368.

\* *Davis v. Clarke*, 6 Q. B. 16.

† In *Jackson v. Hudson*, 2 Camp. 447. Lord

Dunham also cited *Polhill v. Walter*, 3 B & Ad. 114.

1. *Winds. Saund.* 58 b.



## II. Shares in Scottish Companies belonging to English Insolvents.

In the last paper, we have furnished some examples of the manner, and of the degree, in which the Scottish courts of law have given effect to insolvency or bankruptcy arising in England, or elsewhere, beyond the limits of their jurisdiction.

It may be well to point out one or two other instances in which the legislature has followed the same policy.

### I. Effect upon Scottish Interests of the Act for winding up the affairs of Joint-Stock Companies.

There is in particular one statute, which not only (as it should seem) may bring Scottish mercantile bankruptcies of a certain kind within the jurisdiction of the English bankruptcy courts; but which directly enacts, that English orders or judgments of certain kinds shall have the same force in Scotland, as if they had been pronounced by the Scottish courts.

7 & 8 Victoria, c. 111.

On the 5th of September, 1844, the royal assent was given to the statute 7 & 8 Vict. c. 111, entitled "An Act for facilitating the winding up of the affairs of Joint-Stock Companies, unable to meet their pecuniary engagements."

On the policy of this statute, or on the advantages which it is supposed to hold out, both to the partners of such companies themselves and to their creditors, it would be out of place here to speak. Nor does the present purpose lead to, or justify, any observations on the provisions of the statute as they affect English parties only. All that is here to be done is, to show that there are two respects,—in one of which probably, in the other certainly, the statute affects Scottish interests in which English parties may be very deeply concerned.

#### *The statute as probably affecting Scottish Joint-Stock Companies, having branches in England.*

I. It seems far from being improbable, that this statute may have the effect of bringing within its provisions, and of subjecting to the jurisdiction of the English Bankruptcy Court and Court of Chancery, some joint-stock companies whose capital is Scotch, whose proprietary is Scotch, and whose head quarters are in Scotland.

The probability that the statute would be found applicable to some Scottish joint-stock companies, arises from the fact,—that a great number of such companies have now branches in England, and do business in England, some of them to a very considerable extent. Now it does seem probable, that those earliest sections of the statute,—which set forth the cases in which its provisions shall be applicable,—would be found to extend to such Scottish companies, on account of their transactions in England.

This would seem to hold in regard to those acts which the statute makes to be acts of

bankruptcy of joint-stock companies—such particularly are sections 4, 5, 6, and 7. By the first of these sections, a joint-stock company may commit an act of bankruptcy by a resolution of the directors declaring the insolvency of the company. There may indeed be difficulty as to this section; but it is not so obvious that there are such difficulties in regard to the next. The fifth section enacts, that a joint-stock company will commit an act of bankruptcy, if they do not, within fourteen days after notice, pay, secure, or compound any judgment recovered against them for a debt or money demand; provided there be nothing due from the plaintiff which may legally be set off against the judgment. Similar observations might be made in regard to sections 6 and 7. By section 6, it is enacted, that an act of bankruptcy will be committed if the company do not, for fourteen days, any order in equity, bankruptcy, or lunacy, directing them to pay money, the court having first peremptorily fixed the term of payment. By section 7, the same result will follow, (subject to certain provisions for the protection of the company,) if the company do not pay, secure, or compound to the satisfaction of the creditor, within a month after service of a writ of summons at the suit of a creditor, for any sum sufficient to constitute a petitioning creditor's debt.

Now, in such cases as these described in sections 5, 6, and 7, it is difficult to see how a Scottish joint-stock company, having a branch or branches in England, and having contracted to an English creditor debts which they are unable to pay, could justly be allowed to plead their Scottish character in resistance of the application of the English creditor to have an English fiat issued against them, and their funds and affairs subjected, under the superintendence of the English courts, to the provisions of the new statute.

And, on the other hand, it might be found (although this is more uncertain) that the directors of such a company having a branch in England, and having contracted English obligations, are entitled, under section 4, to pass their resolution declaring insolvency, and to put the company voluntarily under all the provisions of the statute.

It must once again be repeated, that in regard to none of these questions is any positive opinion hazarded; all we say is this, that the recent statute does contain enactments which may not improbably be found to bear the interpretation here put upon them.

The same statute, however, contains another section, the application of which in Scotland is express and undoubted.

#### *Decrees or orders of the Court of Chancery to have in Scotland the force of decrees or orders of the Scottish Courts.*

II. It is enacted, in express terms, that decrees and orders of the Court of Chancery, made under the act, shall have in Scotland the same force as if they were decrees or orders pronounced by the Scottish court.

The enactment is contained in section 24. In virtue of that section, if any such order or decree has been pronounced by the Court of Chancery, and if under such order or decree the party mentioned in it has been applied to for payment; and has failed to pay, and if redress should be wanted in Scotland, the remedy may be effectually sought there. The procedure directed is this: that an office copy of the order or decree, and an affidavit of the application for payment, and of the failure to pay, shall be presented for registration in the registers of the court of session in Edinburgh, (the supreme Scottish court); and that, on being so registered in Scotland, the order or decree shall have the same effect for execution in Scotland, as that which belongs to a Scottish bond followed by the decree which is issued on its registration. In short, the English order or decree, if accompanied by the affidavit, must be received and recorded by the keeper of the Scottish registers, and when it is so recorded, execution may instantly be sued out upon it. Those who have perused the previous papers of this series on bills of exchange, may most readily understand the force of the registration, when they are told that the registered decree or order would warrant execution exactly in the same manner as registered protests on bills of exchange.

Although, therefore, it was stated only as a matter of probable inference, that Scottish joint-stock companies transacting business in England, fall, as companies, within the provisions of the statute,—the import of the section last explained, may be stated, not as matter of inference, but as directly expressed by the act. In all proceedings had under the act, orders or decrees for payment made by the Court of Chancery, may, by a very easy and inexpensive step, be made as effectual against the persons or effects of Scottish parties as against the persons or effects of parties who are directly within the jurisdiction of the English courts.

## II. *Shares in Scottish companies belonging to English insolvent debtors.*

The statute now to be referred to exhibits the same policy which the legislature has followed in other late statutes, of endeavouring to concentrate in one focus, and to subject to the jurisdiction of the English courts, as many as possible of the interests emerging in Scotland out of bankruptcy and insolvencies taking place in England.

7 & 8 Victoria, c. 96.

The statute in question is the 7 & 8 Victoria c. 96, entitled "An act to amend the law of insolvency, bankruptcy, and execution," and passed on the 9th August, 1844. It is only to one section of this statute that attention is at present to be directed.

The statute proceeding on the preamble that it is expedient to amend the act of her present majesty, "For the relief of insolvent debtors," enacts that a petition for protection from process under that act may be presented to any

court or district court of bankruptcy, without any notice given. Section 15 is the one now to be adverted to. It enacts that, where the petitioner shall have, standing in his own name or right, any government stocks, &c., or stock or shares in any public company, "it shall be lawful for the commissioner, wherever he shall deem fit so to do, to order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignee or assignees;" and the section adds a clause of indemnity to persons who shall make the transfer in obedience to such order.

Now, this section, by the express terms of it, includes Scottish property of the sort described. It refers to the petitioner's possession of "any government stocks, funds, or annuities, or any of the stock or shares of or in any public company, either in England, Scotland, or Ireland."

Practitioners, therefore, representing a creditor, who may have a debtor taking advantage of the statute, will not fail to observe the hold which the statute gives them over the debtor's property wherever situated within the United Kingdom. If he possesses stock in any Scottish company, that stock is at the disposal of the assignee, for the common benefit of the creditors, just as much as the government stock, or any other part of his property in England. Suppose him to be a proprietor of stock in a Scottish bank. The application having been made to the learned commissioner, and the commissioner having made the order for the transfer, all that remains to be done is to transmit the order to Scotland, to be served upon the officers of the bank, who, indemnified by the act for all consequences, cannot refuse to make the transfer, and so to render the bank-shares available for the common benefit. No process at law is necessary for procuring the transfer.

## NEW BILLS IN PARLIAMENT.

### AMENDMENT OF LAW OF HIGHWAYS.

THIS bill recites, that it is expedient that the repair and maintenance of the public highways should be made more efficient, uniform, and economical; and in order thereto that *parishes* and *places*, now separately maintaining their own highways, should be combined into *districts* and placed under the management of *district boards*, subject to certain inspection and control, and that the laws relating to such highways should in other respects be revised and amended.

It is therefore proposed,

1. To repeal the Highway Act, 5 & 6 Wm. 4, c. 50, saving contracts made under that act.

The bill then proceeds to the appointment of commissioners, way-wardens, surveyors, &c.

2. Commissioners of inclosures empowered

to get their property under the management, and made evidence.

3. Districts to be formed by the commissioners of inclosure. Limits of districts may be altered.

4. Board of way-wardens to be elected every two years by the rate-payers. Exemption as to small hamlets. Commissioners to fix number of way-wardens for each parish.

5. Right of voting for way-wardens same as for guardians of the poor. Capacity of restriction. Vacancies to be supplied.

6. Justices of the peace to be the judges of the wardens.

The powers and duties of the officers are thus prescribed:

7. Powers and duties of board of way-wardens. Officers under repealed act to cease. Surveyors and assessors under repealed act to account and deliver up balances and other property. Property to vest in board of way-wardens. Property to be laid in indictments, &c.

9. Penalties on parties making default in case of death of surveyor, executors to account.

10. Board of way-wardens to hold meetings. Rules to regulate. Special meetings.

11. First and other meetings of board of way-wardens. Chairman to be appointed. Board to appoint surveyor, clerk, and treasurer; subject to approval of commissioners of inclosure. Dismissal of officers.

12. Board may appoint local committees. The rates and levies are provided for as follows:

13. Joint expenses of districts to be paid by proportionate rate. Proportion, how to be settled.

14. Board of way-wardens may consent that parochial highway rates shall be charged in the same proportion as district rates.

15. Board of way-wardens may give parishes to maintain highways out of their own rate.

16. Account of expenditure on highways to be furnished to each parish.

The duties of surveyor, clerk, treasurer, &c. are then specified.

17. Duties of district surveyor.

18. District surveyors and clerks to be appointed.

19. Duties of clerk, treasurer to be appointed.

20. Duties of treasurer.

21. Provision made for the cost of accounts, &c.

22. District meetings to be held once a year by the rate-payers.

23. Notice of time and place of annual meeting.

24. Board of way-wardens to hold general annual meeting. Expenses to be borne thereon.

25. Surveyors to make estimate of expenditure for year ensuing; to give notice to each parish of amount required. Amount to be raised by rate; to be levied with poor's rate.

26. Highway rates and poor's rate to be assimilated in all respects. Amount of rate limited.

27. Yearly abstract of accounts to be sent to commissioners of inclosure. Penalty on non-compliance.

28. Commissioners to send abstract to Secretary of State.

29. Highway rates paid by railway may be apportioned between parishes.

30. The following powers are hereby conferred:

31. Money may be raised for the improvement of highways by the authority of the board of way-wardens, with the consent of the justices of the peace.

32. The like may be done in certain cases, upon the security of the ratepayers.

33. Loans must be repaid within a limited time.

34. Way-wardens and others not to be personally liable.

Next it is provided that the surveyor shall be appointed to make and keep a book of the highways in the parish.

35. Board may hire or purchase premises for the purpose of depositing materials, &c.

36. Lands, or persons liable to deposit highway materials, may be liable to a penalty.

37. Highway repaired by parishes, &c., may be made a parish highway.

38. When new highways are to be kept in repair by parishes, to constitute a district, the justices to determine what parts shall be repaired by the parishes, and what parts by the highway board.

39. Where a highway lies in two parishes, the justices to determine what parts shall be repaired by the parishes, and what parts by the highway board.

40. How costs of proceedings shall be defrayed, &c.

41. The surveyors of roads, &c., shall be changed once a year for the purpose of preventing any one person from continuing in office.

42. Surveyors may contract for materials, work, &c. for highways. Surveys to be made by the surveyors, and not by the justices.

43. Directions as to the use of the highways, &c., and the power to make bye-laws.

44. Power to use adjoining ground as a temporary road.

45. Surveyor to remove snow, &c.

46. Penalty on taking away materials belonging to surveyor.

47. Land allotted to the parish for the purpose of depositing materials, &c., shall be liable to a penalty.

48. Person who takes charge of the materials, &c., shall be liable to a penalty.

49. Person who takes charge of the materials, &c., shall be liable to a penalty.

50. Person who takes charge of the materials, &c., shall be liable to a penalty.

51. Materials where laid in a highway, shall be liable to a penalty.

52. Not to extend to the beach.

53. Notice to be given before materials are

taken from private lands. If the occupier shows cause against the removal, two justices shall decide thereon.

54. If sufficient materials cannot be found in waste lands, &c., surveyor may take them from the several or inclosed lands or grounds, taking satisfaction to the owners.

55. If surveyor shall make pits or holes in getting materials, he shall cause them to be filled up on each side down and covered off. Penalty on surveyor for neglect herein.

56. Penalty on surveyor allowing any heap of stones, &c., to remain on highway at night.

57. Surveyor; damaging mill, dam, &c., by digging materials, to forfeit not exceeding 50s.

58. No tree, &c., allowed to be planted within 15 feet of the centre of the highway.

59. Mode of proceeding if highway is prejudiced by hedges, &c.

60. Time of cutting hedges and trees.

61. Surveyor to make and keep open ditches, &c., and to equalise the through lands adjoining highway, paying for damage, if any, incurred.

The penalties, &c., fixed by the bill are—

62. Owner, occupier, &c. not to suffer such ditches without consent.

63. Penalty for encroaching on highway. Encroachment to be taken down by the surveyor.

64. Steam engines, &c. not to be erected within a certain distance of roads.

65. Proprietors of railways to street gates, &c. where they cross highways.

66. Penalty on persons committing nuisances by riding on footpaths, &c.; by injuring the roads; by damaging banks, causeways, direction posts, mile-stones, &c.; by making fires; by casting balls; by laying timber, &c.; by running.

67. Statute laid on or near highways, so as to be a nuisance, to be removed on notice; or on failure, to remove to dispose of the same by order of a justice.

68. For reports impounded cattle found staying on highways until the penalty herein imposed and the charges are paid. Limiting the extent of penalty. Right of pasturage not taken away.

69. Punishing persons guilty of pound-breach.

The following are the regulations relating to waggons, carts, &c.

70. Names of owners to be painted on all waggons, &c. in the manner herein mentioned.

71. One driver may take charge of two carts, provided they are drawn only by one horse.

72. Drivers of waggons or carts not to ride thereon unless some other person guide them.

73. Drivers causing hurt or damage to others, or quitting the road, or driving carriage without owner's name or not keeping the left or near side, or interrupting free passage, if not the owner, to forfeit 20s.; if he be the owner, 40s.

Proceeding if driver will not discover his name.

74. For securing unknown offenders.

75. Cartways to be 20 feet wide, horseways 8 feet, and footways 3 feet.

76. Width of gates across public cartways and horseways.

77. Justices may order narrow highways to be widened. Surveyor to agree with owners of lands for recompence, and if they cannot agree, the same may be assessed by a jury at the quarter sessions. On payment of money so assessed, ground to be deemed a public highway. Where there is not money sufficient, a further rate may be made by order of the justices at their quarter sessions, not exceeding one-third of rate.

78. Mode of proceedings by whom payable.

73. For securing unknown offenders.

74. Cartways to be 20 feet wide, horseways 8 feet, and footways 3 feet.

75. Width of gates across public cartways and horseways.

76. Justices may order narrow highways to be widened. Surveyor to agree with owners of lands for recompence, and if they cannot agree, the same may be assessed by a jury at the quarter sessions. On payment of money so assessed, ground to be deemed a public highway. Where there is not money sufficient, a further rate may be made by order of the justices at their quarter sessions, not exceeding one-third of rate.

77. Mode of proceedings by whom payable.

The powers conferred for stopping up and altering highways are these sixfold—

78. Previous to a highway being stopped up, &c., surveyor to request justices to view the same.

79. Proceedings for diverting, &c. certain highways, and stopping up unnecessary highways.

80. As to stopping up more than one highway connected together.

81. Court may confirm order for so doing, wholly or in part.

82. Persons who may think themselves aggrieved if such highway should be ordered to be stopped up, &c. may appeal.

83. In case of appeal, jury at sessions to determine whether new highway is nearer, &c.

84. Costs to be awarded in appeal against stopping up, &c. highway.

85. If no appeal be made, or if dismissed, sessions to make order for diverting, &c., and the old ways may be stopped. New highway shall afterwards continue a public highway, &c.

86. Party liable to repair of old highways, to repair new highways.

87. Provisions as to widening of a highway to extend to all highways which persons are bound to repair ratione tenure, &c. Justices to fix annual or other amount payable by party previously bound to repair.

The proceedings which may be taken for non-repair are lastly limited to the following:—

88. Mode of proceeding before justices, if highway is out of repair. In what cases justices cannot interfere.

89. Mode of proceeding if obligation to repair is disputed.

90. Fines, penalties, and forfeitures, how to be levied and applied.

91. Justices empowered to award costs to defendant, where information, &c. withdrawn or dismissed.

92. Court may award costs to the prosecutor.

93. No presentment against inhabitants for highway being out of repair.

94. Inhabitants and officers in parishes may give evidence.

95. Justices may proceed by summons in the recovery of penalties.

96. Compelling witnesses to attend and give evidence.

97. Forfeitures, costs and charges may be levied by distress and sale. Application of penalties.

98. Satisfaction recoverable for special damage; but distress not to be deemed unlawful for want of form in the proceedings. Plaintiff not to recover for irregularity if tender of amends be made.

99. Appeal may be made to quarter sessions against order, &c.

100. Proceedings not to be quashed for want of form.

101. In case of appeal, sessions may grant a special case.

102. Limitation of actions. Defendant may plead the general issue.

103. Expenses of defending prosecutions agreed upon at a vestry meeting, how to be paid.

104. Powers of 57 Geo. 3, c. 29, not interfered with.

105. Not to extend to turnpike roads or to roads under local acts.

106. Not to affect the universities.

107. Nor the rights and liberties of the City of London.

108. Nor the act 1 Geo. 4, c. 7.

109. Powers of commissioners of sewers not abridged.

110. Powers for getting materials and preventing nuisances to extend to county bridges and roads at the ends thereof.

111. Centre of highway defined.

112. Interpretation clause.

113. Concerning the forms of proceedings.

114. Act to apply to England and North Wales.

115. Act may be amended this session.

116. Commencement of act.

## DEBATE ON THE CHARITABLE TRUSTS' BILL.

We are enabled to give a somewhat full report of part of the debate which took place on this bill on the 27th March, when the second reading was proposed, but postponed till after Easter.

Petitions were presented against the bill from several of the City Companies, namely, by the Marquis of Salisbury from the Mercers' Company, and the Earl of Eldon from the Merchant Taylors' Company, and the Coopers' Company; and the Earl of Denbigh from the Rag-bay charity.

The Earl of Eldon, in support of the petitions, said,—

“My Lords, the petitioners say, that by compelling them to submit their accounts and deeds to the inspection of a commission, you will put a check upon the exercise of charity, for that at present they contribute in aid of the charity funds at their disposal from the resources of other estates not held by them for charitable purposes, the particulars of which estates they will not be inclined to submit to government inquiry. That, my lords, is an objection which

I consider very well founded; and I hope your lordships will feel that you have no right to interfere with companies which have, under their charters, power to manage their own funds—who apply the funds which charitable persons have left at their disposal to members of their own bodies who may be in distress—who in every way satisfy the great community who constitute their respective companies that the trust is properly administered—and who have, and can show that they have, sufficient funds at their disposal to stand before the Lord Chancellor as respondents in any suit that may be brought against them. These petitioners complain, my lords, that a heavy tax is to be levied on the funds of charitable estates, and they think they ought not to be subjected to such a tax. I am prepared to say, that as far as such bodies may desire to be exempted, I think this house ought to exempt them from the operation of this bill.”

The Lord Chancellor. Previous to the discussion of last year, this bill was referred by your lordships to a committee up stairs. That committee was not merely of a formal character. There was a strict attendance day by day. All the law-lords attended it; several of the bishops, including the venerable metropolitan, took a warm interest in it; many alterations were made in it, and it ultimately passed your lordships without comment. It went down to the other house of parliament; but, in consequence of the delay which had occurred in discussing it before your lordships' committee, it was found to be too late to pass it through that house during the last session. I do not see, therefore, the necessity for again submitting this measure to consideration; but, if such is your lordships' pleasure, I have no objection to reconsider any clause in it which may be objected to, or to refer it to a select committee again, if it should be so wished. There is a slight alteration in the bill with regard to the constitution of the tribunal for appointing trustees in municipal charities. I do not know that it is material; but if it is your lordships' opinion that the bill on this point should be reconsidered, I shall not object to postpone the second reading.

Lord Brougham. It is a most important bill. I can see no objection to it; and as to the argument of the noble earl opposite, that it would stop charity, I never was so astonished in my life as in hearing such an argument. Why should it stop charity? Why should it? Because it stops the inducements to abuse? My lords, I thought the very best reason that could be urged for constituting not a charity was, that the funds of the charity could not be misapplied.

Lord Campbell. I cannot concur in the suggestion that this bill, as it stands at present, can be improved. I suggest to the noble lord to confine the operation of the bill to charities of small amount, which cannot afford the expense of an application to the Court of Chancery. In that I will honestly support him. There are a great number of charities of no more value

than 100*l.* a-year, and to apply to the Court of Chancery, under present circumstances, with respect to charities of that value, is to open the door to a great abuse of those charities. There is no tribunal from which redress in the cases of such charities can be cheaply obtained, and I would wipe away that reproach from our jurisprudence. But the income of the charities of England to which this bill applies amounts to no less than a million and a half a-year, and to subject all these charities to the inspection of a commission—to subject their property to a tax for the support of a commission—to subject the trustees of the donors to the inquisition of a commission—that, my lords, I will strenuously resist. My lords, when the Court of Chancery can be applied to, it is, beyond doubt, the best tribunal to which, in these cases, we can possibly resort. Instead of overthrowing its powers, let us try to simplify and cheapen the process of that court; but do not let us create an arbitrary, despotic, irresponsible, and expensive power to supersede trustees, and under that sway to affect the political power of boroughs returning representatives to parliament. To that course I am strenuously opposed. I expressed the same views upon the subject last session; and I now repeat, that if the noble lord will dismiss that part of the bill which subjects great corporations to the authority of a commission—if he will dismiss that part of it which enables commissioners to interfere with trustees, and that part which gives a power over charities vested in municipal bodies, I will support him in his endeavour to simplify and cheapen the process by which interference may be obtained in the case of charitable trusts. But I will not support the machinery which this bill seeks to create; and to the measure, indeed, in its present shape, I shall feel bound to give my most strenuous opposition.

*The Lord Chancellor.* The object and purpose of this bill is to secure the better administration of small charitable trusts. Its intent is to do justice where justice cannot now be done, in the cases, namely, of small charities; and, with regard to other charities, to give a power of inquiry into their receipts, and the manner in which they are applied,—not with a view to correct abuses, but in the conviction that, by requiring them to render periodical accounts, abuses will be checked; and that, by affording an opportunity of exposure, others will be enabled to ascertain the real facts, in order that if requisite proceedings may be instituted in the Court of Chancery, by which due correction might be applied. No other powers are to be given by this bill excepting only that single power of sale, mortgage, or exchange of lands to which my noble friend has adverted. And what is that power? A power, my lords, for the benefit of the charities themselves. If they want to lease, to sell, or to exchange lands for the benefit of the trust, they will, under this bill, have the power of doing so at a moderate cost, instead of being forced to go into the Court of Chancery at a cost so great that, except in some special cases, it is impossible that an application

for the purpose can be made. And what grounds are there for complaining of the bill? What, my lords, are the trustees of charities but public officers invested with public powers and public duties? Are they to be afraid of investigation? I should have thought, my lords, they would have been glad to court inquiry. It would free them from suspicions founded upon vague and indistinct charges: if they unfold their accounts, show how their funds are applied, and satisfy every man that that they are acting properly, what can be more desirable for themselves?

Then, my lords, as to another point. An objection is taken to the proposed appointment of the trustees of municipal charities. It is argued that there is a party object in this arrangement, and that commissioners will be more likely to be influenced by such considerations than the Masters in Chancery. I am sure your lordships will be of opinion there is no just ground for this objection. How are the trustees appointed now? By application to a Master in Chancery, who reports to the Lord Chancellor the names of the parties whom he may deem fit and proper for the office. I admit that the Masters have performed their duties fairly and properly. I do not mean to surmise that in any single appointment the Masters have been influenced in the performance of their duties by any base or political motive; but I must say that there is no better security against such motives under the present system than there will be under the proposed commission. If this bill pass, the trustees of municipal charities will be appointed by the commissioners. The commissioners will hold their office independently of the crown, and during good behaviour, *durante se bene gesserint*; and if persons properly qualified are placed in those offices, may you not expect perfect reliance to be placed on the due performance of their duties? In point of responsibility and independence, they will be on an equal footing with the Masters in Chancery.

*Lord Cottonham.*—My lords, it has been said of this bill, that it gives a power to a body of commissioners greater than is given to the Court of Chancery. My lords, I say it does a great deal more. The parliament itself has never exercised such powers. No act of parliament ever gave such authority as will be given to these commissioners. They are to have a power of selling trust property—of diverting trust funds from their original purposes, without regard to the intentions of the founders—without regard to the doctrine of *cy pres*. The noble lord thinks that he has made out the case of this bill by telling us, that the judicial powers of the commissioners will, under its provisions, be limited to the smaller charities. Has he maintained that principle with regard to charities in the hands of the municipal corporations? No. But if the commissioners are to have power only over the smaller charities which are in the hands of private trustees, why should not their powers be limited to the smaller charities in the hands of the municipal corpora-







suit, and after a reference to the Master, one of the female plaintiffs had married a defendant, a settlement being made of the wife's interest in the subject matter of the suit. The husband and the trustees of the settlement were made defendants in the supplemental suit, but the other defendants to the original bill were omitted.

*Held*, that the supplemental bill was defective by reason of the omission. *Davies v. Price*, 31 L. O. 200.

9. *Supplemental bill*.—To an administration suit by legatees, some of the next of kin who were contingently interested in the estate were made parties. By supplemental bill, others of the next of kin were brought before the court. *Held*, that the executors were proper parties to the supplemental bill. *Parker v. Parker*, 31 L. O. 342.

#### PARTNER.

1. *Executors*.—A, B, and C, having been in partnership together, and A and C having died, a bill by the residuary legatees of A against his executors, and against B and the executors of C for an account of the personal estate of A, was sustained under the special circumstances of the case, although collusion between the executors of A and the other defendants was neither charged nor proved. The case of *Newland v. Champion*, 1 Ves. sen. 105, considered. *Law v. Law*, 2 Coll. 41.

Cases cited: *Beckley v. Dorrington*, West Ca. temp. Hardw. 169; 6 Ves. 749, cited; 2 Eq. Ca. Abr. 78; *Holland v. Prior*, Ca. t. Brough. 426; 1 Myl. & K. 237; *Bowsher v. Watkins*, 1 Russ. & M. 277; *Davies v. Davies*, 2 Keen, 534; *Gedge v. Fraill*, 2 R. & M. 281, n.

2. *Separate creditor*.—Bill by the separate creditor of a deceased partner, sustained, under the circumstances of the case, against the representative of the deceased partner jointly with the surviving partner.—*Newland v. Champion*, 2 Coll. 46.

### III. PRACTICE IN EQUITY.<sup>b</sup>

#### AFFIDAVIT.

*Signature*.—An affidavit of service purporting to have been sworn before a justice of the peace in America, whose signature was duly certified by the governor of the state, but was not signed by the deponent, was refused to be filed by the clerk of the affidavits. The court, upon motion, refused to order him to do so.

*Quære*, Whether the defect could be supplied by the production of another affidavit verifying the imperfect document as an exhibit? *Anderson v. Stather*, 31 L. O. 157.

#### AMENDING BILL.

1. The court will allow a bill to be amended within a limited period after the time for

<sup>b</sup> This part of the Digest, includes the numerous practical cases reported exclusively for the Legal Observer.

amending has expired, on payment of costs, and satisfactorily accounting for the delay. *Winnall v. Featherstonehaugh*, 31 L. O. 199, 462.

2. Amendment of a bill, whereby it is converted from a bill seeking to restrain a defendant from defeating the plaintiff's right at law, to one seeking relief obtainable only in equity, is not necessarily such a variation in the original case, as entitles the plaintiff to have the original bill dismissed. *Abram v. Ward*, 31 L. O. 221.

3. Application for special leave to amend, under the above orders, must, in the first instance, be made to the Master; and the requisite affidavits, wherein the plaintiff is unable to join, must be made by the solicitor, and not by the clerk alone, who conducts the suit. *Christ's Hospital v. Grainger*, 31 L. O. 317.

4. The eight days allowed by the 38th sect. of the 16th Order and 71st Order of May, 1845, apply only to the case of an amendment made after answer.

The clerks of records and writs will receive an answer to a bill which has been amended, although such answer purports to be an answer to the original bill only, provided no answer to the original bill has been put in by the party so answering. *Rigby v. Pincock*, 31 L. O. 415.

5. A plaintiff has a right to amend by a common order, under the 66th Order of May, 1845, if the answers of all the defendants are not at the time sufficient, although one of the defendants may have acquired a right to move to dismiss under the 114th Order, and have given notice of a motion to dismiss at the time when the amendment is made. *Lester v. Archdall*, 31 L. O. 416.

6. It is not sufficient, under the 68th Order of 1845, for the purpose of obtaining leave to amend, to show that due diligence has been used during part of the time allowed for amending, if there appears to have been unnecessary delay during another part. *Winnall v. Featherstonehaugh*, 31 L. O. 462.

#### APPEARANCE.

1. *Service of subpoena*.—Service of subpoena to appear and answer upon the deputy governor of the house of correction in Cold Bath Fields, held, under the circumstances of the case, to be good service on a defendant a prisoner there, so as to found an application for leave to enter an appearance for the defendant under the 8th of the Orders of August, 1841. *Newham v. Pemberton*, 2 Coll. 54.

2. The court will not allow a plaintiff under the above Order to enter an appearance for a defendant who is resident out of the jurisdiction. *Marquis of Hertford v. Suisse*, 31 L. O. 57.

3. Where more than three weeks have elapsed since the service of a subpoena, the court will not make an order for the plaintiff to enter an appearance for the defendant, although the service was effected before the Orders of May, 1845, came into operation. *Isman v. Holden*, 31 L. O. 187.

And see *Infant*.

## BARRISTERS' CLERKS' FEES.

The court has no jurisdiction over a barrister's clerk who has kept a fee, out of money belonging to a solicitor, of larger amount than allowed; but the fees of such clerks can only be considered as gratuities, which the solicitor or party consulting the master may pay or not at his own option. There is no legal demand; but clerks' fees are by custom usually paid, and are allowed, on taxation, to the amount mentioned in the scale approved by the Lord Chancellor, and the other judges [on the 5th Nov. 1840.] *In re Cotton*, 31 L. O. 268.

## CONTEMPT.

**Costs.—Taking plea off the file.**—A prisoner in contempt, and remanded until he should answer the bill, and clear his contempt, or the court should otherwise order, filed a plea, and obtained an order, upon petition *ex parte*, at the Rolls, upon certificate of plea filed, to tax the costs of the contempt, and for his discharge upon payment or tender of such costs: he did not pay or tender such costs, and the Vice-Chancellor *Wigram*, on motion by the plaintiff, ordered the plea to be taken off the file.

A defendant in contempt cannot, in answer to an application founded on the contempt, object that the plaintiff has not taken a step in the cause, which might have amounted to a waiver of the contempt. *Wilkin v. Nainby*, 4 Hare, 473. See *Foulkes v. Jones*, 2 Beav. 274; *Wilson v. Bates*, 4 Myl. & Cr. 197; *King v. Briant*, id. 391.

## CREDITOR'S SUIT.

After a decree for an account in a creditor's suit, there is no other way of getting rid of it but by bringing on the suit for further directions. *York v. White*, 31 L. O. 463.

## DEMURRER.

The word "demurrer," in the 38th Order of August, 1841, construed as meaning any demurrer by means of which a defendant might have protected himself from discovery.

The Master, by the 38th Order, has jurisdiction to ascertain, upon exceptions to an answer, whether a bill is demurrable.

The distinction between demurrers to bills for relief, and bills for discovery, pointed out.

In certain cases, a party may obtain an order for leave to amend, without prejudice to the exceptions. *Kay v. Wall*, 31 L. O. 33.

## DISMISSAL.

1. The repeal of former orders by the 1st Order of May 1845, does not deprive a party to a cause of any right which he had, according to the practice of the court, acquired under the repealed order.

After replication had been filed, the defendant became entitled to move to dismiss the bill before the Orders of May, 1845, came into operation. On motion afterwards, leave was given to the plaintiff to file a replication under the new orders within a week, and if not, the bill to be dismissed. *Brandt v. Epps*, 4 Hare, 343.

2. Form of the notice of motion to dismiss a bill for want of prosecution where the last step was a replication filed under the old practice. *Spencer v. Allen*, 4 Hare, 455.

3. The 114th Order (S. 4) of May, 1845, as to the dismissal of bills for want of prosecution, applies to cases in which publication passed under the old practice, before the Orders of May, 1845, came into operation. *Robinson v. Purday*, 4 Hare, 483.

4. The 114th Order of May, 1845, as to the dismissal of bills for want of prosecution, does not apply to a case where the subpoena to rejoin had been served and there had been a commission to examine witnesses before the Orders of May, 1845, came into operation, but publication has not passed. *Prentice v. Phillips*, 4 Hare, 484.

5. Under the 114th and 118th Orders of May, 1845, any defendant may move to dismiss a bill, on the expiration of four weeks after his answer, or the last of his answers, if more than one is found or deemed sufficient, although there are other defendants who have not answered. *Dalton v. Hayter*, 112.

6. Where replication has been filed before the Orders of May, 1845, came into operation, the plaintiff cannot serve a subpoena to rejoin and proceed according to the old practice, but the court will order the plaintiff to file a new replication, and if that is not done the bill will be dismissed. *Lovell v. Blew*, 31 L. O. 156.

7. Where more than two months and four weeks had elapsed since the replication had been filed, and the plaintiff had taken no further step, and the replication was filed before the new Orders came into operation, and no subpoena to rejoin had been filed, the court refused to dismiss the bill. *Hemming v. Dingwall*, 31 L. O. 176.

8. *Semble*, That a defendant who was entitled to the dismissal of the bill under the Orders of 1828, prior to those of 1845 coming into operation, but who would not be entitled to dismiss under the latter, ought to proceed according to the old practice. *Whitworth v. Whitworth*, 31 L. O. 200.

9. Where replication was filed before the Orders of May, 1845, came into operation, and the defendant would be entitled to dismiss for want of prosecution according to the time limited by those Orders, the court will order the plaintiff to file a new replication within a limited time, or that the bill shall be dismissed, but will not give any costs of the motion.

*Hoole v. Roberts*, 31 L. O. 248.

10. If after notice of motion to dismiss for want of prosecution, the plaintiff, in answer to a motion, undertakes to file a replication, the proper course is for the motion to stand over till the next seal, at which time, if replication have not been filed, the court will make the order. *Young v. Quinsey*, 31 L. O. 318.

11. Where the time has expired after which a defendant who has answered is entitled to move to dismiss for want of prosecution, under the 114th Order of May, 1845, he is entitled so to move, although his answer may have been

put in before the Orders of May, 1845, came into operation. *ibid.* his own report. *ibid.*

But, if one of the defendants answered, such answer was put in, whereby the suit became abated; that is an answer to the application. *Hutwick v. Young*, 31 L. O. 368.

112. Form of order to dismiss where filed without authority against an *ex parte* bill. *Whitmore v. Slater*, 31 L. O. 159.

116. 11. *Whitmore v. Slater*, 31 L. O. 159.

117. The time for filing exceptions to an answer is limited to the period allowed by the Orders of 1845, although the answer may have been filed before those Orders came into operation. *Whitmore v. Slater*, 31 L. O. 159.

118. To induce the court to appoint a guardian, it is necessary to show that applications has been made to those who are connected with such person, and that they refuse to act on his behalf.

The affidavit deposing to the unsoundness of mind of such person should state that it continues up to the time of the application being made. *Warner v. Platell*, 31 L. O. 76.

#### INFANT.

1. Jurisdiction. — Appearance. — Motion for leave to enter an appearance for infants resident in America, and who had been served with the subpoena, refused; the court considering it doubtful whether such service was good, within the 4 & 5 Will. 4, c. 82, and recommending an application to the Lord Chancellor. *Anderson v. Statler*, 31 L. O. 157.

2. Appearance. — Under 2 & 3 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, the court is empowered to order an appearance to be entered for infant defendants resident abroad, and a guardian to be assigned them according to the 32nd General Order of May, 1845. *Anderson v. Statler*, 31 L. O. 488.

#### INJUNCTION.

The 25th article of the 16th of the Orders of May, 1845, does not extend to injunction causes. *Hughes v. Thomas*, 2 Coll. 239.

#### IRREGULARITY.

Setting aside *fi fa*. — Where a party is de prived of setting aside *fi fa* for irregularity, on the ground of a defect in the form of the Order under which it was issued, the application should be to set aside the order. *Potts v. Dalton*, 31 L. O. 94.

#### INTERROGATORY.

The words "or either of them" were omitted in this interrogatory, and their place was not supplied by any equivalent expression. Held, that the interrogatory must be suppressed, and the deposition taken under it expunged. *Penock v. Kernel*, 31 L. O. 135.

#### JURISDICTION.

Jurisdiction or discretionary power of the court, by the effect of the statute 3 & 9 Vict. c. 105, s. 2, to vary or relax the terms of the General Orders of August, 1841. *Medhurst v.*

*Alison & Harcourt*, 479. See *Collett v. Gander*, 1 Phil. 312.

#### MARRIED WOMEN.

The court will not order the payment of money belonging to a married woman, which the husband says is entitled to recover, by the solicitor of the husband. *Chambers v. W. & C. & Co.*

119. A fund standing in the name of a married woman will not be ordered to be paid to her or her nominees without an order of the court, although it is clearly proved to be her separate property. *W. & C. & Co. v. W. & C. & Co.*

120. An order enrolled under this

Enrolling. — An order enrolled under this act need not be served afresh before it is enforced. *O'Grady v. Walgrave*, 31 L. O. 16.

121. Of course. — An order of court cannot be amended after it has been served, except upon special application to the court, although the error is in the return from a witness. *Wool v. Huxley*, 31 L. O. 247.

122. Date of. — Where a petition stands over for production of further evidence, the court will not allow the order to be made on the day of the first hearing. *W. & C. & Co. v. W. & C. & Co.*

#### PAYMENT INTO COURT.

1. Where the time limited by the conditions of sale for payment of purchase money has expired, the court will not, at the instance of the vendor, appoint an earlier day than that fixed by the purchaser for payment into court of such purchase money, provided the time required is not unreasonable. *Lyons v. Woodcock*, 31 L. O. 113.

2. The court will not on motion order money into court, admitted to have been received by a defendant, unless there is a clear admission in the answer of the precise sum referred to in the notice of motion. *W. & C. & Co. v. W. & C. & Co.*

If a balance should be paid into court is only to be made out by examination. The court will not make any order. But the defect may in certain cases be supplied by affidavit. *Elliot v. Morris*, 31 L. O. 166.

#### PETITION.

1. Unnecessary length. — The court will give the petitioner leave to amend or refer the petition to the Master for the purpose of reducing into their length. *O'Neil v. O'Neil*, 31 L. O. 76.

2. Defendant absconding after appearance. — Practice, on taking bills up to and under the 77th and 78th Orders of May, 1845, against a defendant, deemed to have absconded, after appearance by his own solicitor. *Chambers v. W. & C. & Co.*

*Harrison v. Standard*, 2 Hare, 535. See *Harrison v. Standard*, 2 Hare, 535.

3. Unless the evidence is distinct and positive, the court will decline making an order to take the bill *pro confesso* upon motion, but will fix a day for the hearing, and then hear the cause shown. *Courage v. Warren*, 31 L. O. 297.

4. The report of the Master, under the 6th of the rules of 1843, 1844, that a defendant is unable to put in his answer by reason of poverty, will not prevent the bill being taken *pro confesso* against him under the said rule, if he has not followed up the report by an application to the court.

If a defendant is brought up from prison in the country under the second of the above rules, and committed to the Queen's prison, the bill may be taken *pro confesso* against him, without bringing him up a second time for the purpose of remanding him to the Queen's prison. *31 L. O. 298.*

5. In a suit against a mortgagor, vouchers relating to his security will be ordered to be produced, although it may appear by his answer, that they do not form part of the plaintiff's title, provided they may tend to make out and support the case stated in the bill. *Gibson v. Hewitt*, 31 L. O. 270.

6. Circumstances in which the court will not order the production of a case laid before counsel, and other papers. *Reece v. Rye*, 31 L. O. 149.

ENLARGING PUBLICATION.

1. Where replication was filed before the Orders of May 1845 came into operation, the court may enlarge publication, although it may have passed according to the 11th and 12th of these orders, without resorting to the old practice. *Gilchrist v. Gilchrist*, 31 L. O. 112.

2. The court refused to enlarge publication, even to a day which could not postpone the hearing of the cause, where there had been much delay on the part of the defendant in the earlier stages, and a long period of unexplained delay in the examination of his witnesses, before publication passed. *Daniel v. Hill*, 31 L. O. 318, 341.

3. Where it appeared, that in Jan. 1844, a subpoena to rejoin had been served, and also a commission to examine witnesses in this country had been ordered; that in May of the same year, a commission for the examination of witnesses abroad had been ordered, but that no step had been taken since; the court, upon motion and cross motion, on December, 1845, first adjourned by the defendant, and secondly, on the plaintiff's joint commission, refused the former, and granted the latter, upon the terms that publication should pass on or before the 1st of January 1846.

4. The Orders of April 1828, 1829, 1831, and May 1845 are inapplicable to a case under the above circumstances. *Pratt v. Phillips*, 31 L. O. 391.

5. Money was paid into the hands of the Accountant General by one of the directors of a Railway Act, by which leave was given to apply for repayment, upon the petition of the majority of those by whom it had been paid.

Held, upon the petition of three of these directors, that the money might be repaid, the others being served with notice. *Ex parte Blackpool Railway Company*, 31 L. O. 15.

6. On the application of the directors of a railway company to have a sum of money deposited with the Accountant General paid out to them on the Speaker's certificate of the petition for the bill being withdrawn, the court will, at the request of the directors, order it to be paid to a third party, although the statute under which it is paid in requires it to be paid to an agent of the directors, provided the necessity is duly verified. *Re Sheffield Railway*, 31 L. O. 510.

RECEIVER.

1. An objection to an order of appointment of a receiver, upon the ground that one of the defendants, who is out of the jurisdiction, has not put in his answer, is not a valid objection, that the action is really the action of a receiver brought under the sanction of the master. *Hoare v. Greville*, 31 L. O. 271.

2. The husband of a  *feme covert*  entitled to separate property settled, to her separate use, without power of anticipation, is not entitled to the interference of the court for the appointment of a receiver on his behalf, of the rents and profits of such property. *Wiles v. Cooper*, 31 L. O. 292.

SERVING COPY OF BILL.

1. *Har at Law*.—Where a bill in a creditor's suit does not pray that the debtor's will may be established against his heir at law, *quare*, whether it is proper to serve the heir with a copy of the bill? *Shakels v. Richardson*, 2 Coll. 34.

2. *Residuary legatee*.—Bill by one child, entitled with the other children to the residue of real and personal estate, against the widow and eldest son of the testator, who were the trustees and executor, for the execution of the trusts of the will and administration of the estate, and praying a receiver. The widow claimed a life estate adversely to the children. Held, that the residuary legatees, who were defendants, (other than the executor,) were properly served with a copy of the bill, under the 23rd Order of Aug. 1841. *Davis v. Davis*, 4 Hare, 389.

3. Where an order has been obtained, ex parte, under the 23rd Order of Aug. 1841, to extend the time for service of a copy of a bill, it is not necessary to serve a copy of such order with the copy bill. *Waters v. Clayton*, 31 L. O. 271.

4. Where a bill was served previously to October, 1845, an order may be obtained as of course for entering a memorandum of service, although more than twelve weeks may have elapsed since the service. If an application to the court becomes necessary



sary, under the 28th Order of May, 1845, for leave to enter a memorandum of service, the court must be satisfied that the order is not sought for the purpose of delay. *Fordyce v. Bridges*, 31 L. O. 94.

5. The court will not make an order for service of copy of a bill after the twelve days limited by the above orders have expired, without being satisfied by affidavit that the plaintiff has not been guilty of delay. *Henry v. Colder*, 31 L. O. 221.

6. Where a bill was filed before the Orders of May 1845 came into operation, service of copy will be deemed good, although more than twelve weeks may have elapsed between the time of the bill being filed and the service. *Foltham v. Clerk*, 31 L. O.

#### SERVICE OF ORDERS.

Under the present practice it is not necessary, if the same solicitor appears for more than one party, to serve more than one copy of an order nisi upon him. *Anon.*, 31 L. O. 248.

#### SERVICE OF SUBPOENA ABROAD.

1. Service of subpoena allowed upon a party residing at Baden-Baden; permission being given to serve him anywhere within the duchy. *Preston v. Dickenson*, 31 L. O. 94.

2. The court may allow subpoena to be served on a party out of the jurisdiction, in any part of the country in which he may be residing. Form of the order. *Blenkinsop v. Blenkinsop*, 31 L. O. 318.

3. Fourteen days allowed after service of subpoena in Belgium. 32nd and 33rd Orders of 1845. *Biddulph v. Darrell*, 31 L. O. 342.

#### SUBSTITUTED SERVICE.

1. The court will not order substituted service upon a defendant resident in Jamaica, by serving another defendant, who had in his answer admitted that he was the agent of the first mentioned defendant, in the matters in question in the cause, because these admissions of the agent were no evidence against the party as against whom the order must be made. *Webster v. Barnes*, 31 L. O. 249.

2. Where a defendant keeps out of the way for the purpose of avoiding service of a subpoena, an order should be obtained for substituted service, previously to the subpoena being left at the defendant's usual place of residence. *Thorpe v. Harvey*, 31 L. O. 156.

#### SUPPLEMENTAL ANSWER.

*Mistake.*—Supplemental answer permitted to be filed on the ground of mistake, no fraud being suggested. *Swallow v. Day*, 2 Coll. 133.

Cases cited: *Wells v. Wood*, 10 Ves. 402; *Curling v. Marquis of Townshend*, 19 Ves. 631; *Edwards v. McLeay*, 2 Ves. & B. 256; *Strange v. Collins*, 2 Ves. & B. 162; *Greenwood v. Atkinson*, 4 Sim. 54.

#### SWEARING ANSWER.

*Open court.*—The Vice-Chancellor *Knight Bruce*, on the ground of inconvenience in practice, which might possibly arise if the application were granted, refused to allow an answer

to be sworn in open court. *Swallow v. Day*, 2 Coll. 135.

#### TIME.

1. Where the time within which a plaintiff is entitled to procure the Master's report upon exceptions for insufficiency has expired without the report having been procured, through the accidental error of the plaintiff, in referring the exceptions to the wrong Master, the court made an order referring the exceptions to the Master, notwithstanding the lapse of time. *Knoll v. Raymond*, 31 L. O. 175.

2. Where the time allowed for taking a certain step in a case expired before the General Orders of May, 1845, came into operation, those orders do not survive. *Medhurst v. Allison*, 4 Hart, 480.

#### TRAVELLING NOTE.

A travelling note may be filed for persons out of the jurisdiction. *Markath v. Williams*, 31 L. O. 318.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Vice-Chancellor of England.

##### AMENDMENT.—APPEAL.—AFFIDAVITS.

*The delay occasioned by an appeal as to whether new matter ought to have been introduced by way of amendment or by way of supplement, will not preclude a plaintiff after the appeal is determined, from obtaining leave to introduce the matters in question by way of amendment.*

*Such an amendment allowed against a defendant made such by the supplemental bill.*

*In such a case it is not necessary for the affidavit in support of the amendment to state that they could not have been introduced sooner by reasonable diligence.*

This was a motion for leave to amend under the following circumstances. The original bill was filed in 1842, and was a simple creditor's suit. In 1843, a supplementary bill was filed, bringing before the court the provisional assignee of the original defendant, who had become insolvent, and praying relief in respect of an action of ejectment, which had been brought subsequently to the filing of the original bill; but arose out of matters anterior to that period. The Vice Chancellor decided, on the 26th of July, 1843, that these matters were not proper subjects for a supplemental bill, but should have been introduced by way of amendment. This decision was appealed from. The appeal was argued before the Lord Chancellor on the 18th of Dec., 1843; but his lordship did not give judgment until the 5th of November, 1845, when he affirmed the decision of his Honour.

On the 15th of December, notice of a motion for leave to amend, by introducing into the original bill, the matter which had formed the

supplemental bill, was served on the provisional assignee.

The motion was opposed upon three technical grounds, besides a substantial one on which his Honour's opinion was with the plaintiffs. First, that the original bill could not be amended, as against a sole defendant who had been made a party by a supplemental bill. For how could such a defendant put in an answer to the original bill? Secondly, on account of the great delay in making the present application. Thirdly, because the affidavit in support of the amendment did not positively state that the application could not have been made sooner; Mr. Stuart and Mr. Store for the motion.

Mr. Bethell and Mr. Follett contra.

On the third point, *Christ's Hospital v. Grainger*, ante, p. 317, was referred to.

The Vice-Chancellor of England expressed his opinion that the original bill might be amended after a supplemental bill had been filed, bringing a new defendant before the court: and on the other points said: It really did not appear to him that the most rigid conservative of rules must sometimes allow them to be relaxed. The necessary consequence of the appeal was delay, but the right of appeal was, he might say, the birthright of the English subject. And it could not be that a case was to be treated after an appeal as if there had been no appeal. The appeal must keep in suspense the original judgment, and some time must be given the plaintiff for consideration, after it was decided, as to whether he would amend or not. He did not therefore think that the delay in making the application was a sufficient reason for rejecting it. Nor did he think it necessary for the plaintiff's affidavit to specify that amendments could not have been made sooner with reasonable diligence, where, as here, the proceedings of the court themselves showed that such was the case.

Leave to amend given. The costs occasioned by introducing as supplemental matter, what ought to have been introduced by way of amendment, to be paid to Mr. Sturgis as part of the estate of the insolvent.

*Parker v. Sturgis.* March 12, 1846.

#### Queen's Bench.

(Before the Four Judges.)

#### PRACTICE.—INSPECTION OF TRANSFER BOOKS.

*In an action by the holder of stock against the Bank of England, where the question in dispute was, whether certain stock standing in the plaintiff's name had been legally and properly transferred into the name of other parties, the court granted permission for the plaintiff to inspect the transfer books of the bank, as far as they related to this particular transfer.*

THIS was an action against the Bank of England to recover the sum of 373*l.* 19*s.* 4*d.* It appeared from the books of the bank, that the plaintiff had been a holder of stock in the three and a-half per cents to the amount claimed;

but the defendants alleged that the sum demanded had been transferred out of the name of the plaintiff to other parties. The plaintiff, on the other hand, stated that she had never assented to, or in any manner authorised the transfer of such stock. Under these circumstances, the plaintiff obtained a rule nisi, calling on the defendants to show cause why the plaintiff might not be permitted to inspect the transfer books belonging to the Bank of England, for the purpose of seeing when and in what manner the stock had been transferred.

Sir F. Kelly, Solicitor-General, and Sir John Bayley, showed cause.

The defendants are liable for the improper transfer of this stock, and at the trial they must prove that a proper authorised transfer has taken place, but the court will not call upon them to allow the plaintiff to inspect their private books. The defendants have always been ready and willing to permit the plaintiff to inspect the ledger containing a register of the stock, and the names of the holders, but they refuse to produce the transfer books, which are not public documents. A certain form of transfer has been given by statute, but the defendants are not compelled by law to keep transfer books, and those which are kept are merely as between the government and the bank. In *May v. Gwynne*,<sup>b</sup> the court refused to compel a vestry clerk to produce and permit copies to be taken of documents from the parish chest for any other than parochial purposes, and *Abbott, C. J.*, in giving judgment, assigns as one reason, that the court ought not to order a party to furnish evidence against himself. The plaintiff only seeks by this application to become acquainted with the defence which is intended to be set up by the bank.

Mr. Pearson, in support of the rule.

It is admitted that this stock once stood in the name of the plaintiff, who denies ever having authorised the bank to transfer it into the name of any other person, and upon the authority of numerous cases the court will grant inspection of these transfer books, in order that the plaintiff may see in what manner the stock has been transferred. In *Re v. The Hostmen in Newcastle-upon-Tyne*,<sup>c</sup> a person claimed to be admitted into this company, and the court allowed the inspection of the books of the corporation for the purpose of seeing whether the master he served had been admitted to his freedom in the corporation. In *Geery v. Hopkins*,<sup>d</sup> it was held that the East India Company might be compelled to produce at a trial their cash and transfer books. In *Re v. Tower*,<sup>e</sup> the court granted a mandamus to the lord of a manor to allow a copyhold tenant to inspect the court rolls as far as related to the cutting of underwood. In *Re v. The Bishop of Ely*,<sup>f</sup> the court granted a mandamus to compel a bishop to allow inspection.

<sup>a</sup> This case was argued last Michaelmas Term.

<sup>b</sup> 4 B. & Ald. 301.

<sup>c</sup> 2 Stra. 1223.

<sup>d</sup> 4 M. & S. 162.

<sup>e</sup> 2 Ld. Raym. 851.

<sup>f</sup> 8 B. & C. 112.

tion of his register of presentations and instructions to a living in his diocese by a person claiming the right of patronage, although the bishop also claimed that right. He also cited *Warrior v. Giles*, and *Mildred v. Thurston*.

Lord Denman, C. J., now delivered the judgment of the court. We are of opinion that the party who denies that any transfer took place should have an opportunity of seeing the transfer book of the Bank of England with reference to this particular transfer.

Rule absolute.

*Rex v. The Bank of England*. Sittings in Banc after Hilary Term, 1846.

Queen's Bench Practice, Reg. 1.

POOR.—CERTIORARI, WHEN GRANTED BEFORE APPEAL TO THE SESSIONS.

If an order of removal be defective on the face of it, the court will, in the exercise of its discretion, grant a certiorari to remove it, although the applicants might have appealed to the sessions, but have not done so.

A RULE had been obtained in Michaelmas Term, calling upon two justices of the peace for Gloucestershire to show cause why a certiorari should not issue to remove into this Court of Queen's Bench an order made by them for the removal of certain paupers from the parish of Chipping Sodbury to the parish of Alderley, both in the county aforesaid. The order purported to be made on the 14th of July, 1845, by two justices "acting in and for" the Sodbury division of Gloucestershire, and instead of ordering an immediate removal, according to the usual form, expressly made its execution contingent upon the steps which might be taken under the Poor Law Amendment Act, 3 & 4 Will. 4, c. 76, ss. 89, 91. On the 5th of August, 1845, (notice of chargeability having been given and expired,) the paupers were removed. The next quarter sessions for Gloucestershire were held on the 14th of October following, but no appeal was then entered, nor had any notice of appeal been previously given.

J. C. Symons, on Jan. 26th, showed cause. Although the order may be technically defective, the court will not grant a certiorari, unless some special cause be shown, as for instance, that justice has not been done. *Regina v. The Manchester and Leeds Railway Company*, 8 A. & E. 413. The applicant ought to have appealed in the first instance to the quarter sessions, where the order might have been amended and considered upon the merits, pursuant to the stat. 5 Geo. 2, c. 19. In *Rev v. The Inhabitants of Uttoxeter* it was held "upon great debate and search of precedents, that a certiorari would not lie to remove the poor's rate itself, the remedy being to appeal, or by action when a distress is taken;" and that rule was acted upon in *Rev v. The Justices of Somersetshire*, 1 D. & R. 443. Public business would be greatly impeded, if it were to become the

practice to make applications such as the present in the first instance. "abwqwu n" (Granger, contra) is because the proceedings of justices of the peace are the face of them, a certiorari to remove them will be granted, unless that remedy has been taken away by express enactment. *Stapley v. Colclough*, 2 New Cas. (1815) 5. *Rev v. The Justices of Sussex*, 1 M. & Sel. 631. Here the order is bad both in form and substance, for not only is the jurisdiction to make it insufficiently shown, but it altogether departs from the established form. It is, therefore, for the benefit of the other side, that the order should be removed by certiorari in the first instance, for if the order be quashed by the court, they will not be made to pay costs, and if it be confirmed, they will be entitled to receive them; whereas, if we had appealed to the sessions, and the other side had been unsuccessful, they would have been liable to pay costs; and had they been successful, it would still have been necessary to take the opinion of the court above.

Cur. adv. vult.

*Williams, J.*, (Jan. 31,) after stating the nature of the application, said, "I believe that there is no authority against this application, and I can see no reason why it should not be granted; it seems to me to be better for both sides, that a certiorari should be granted, and by doing so, much useless trouble and expense may in future be avoided."

Rule absolute.

*Regina v. Blythburgh and another*, Esquires. Hilary Term, 1846.

27. Exchequer.

2. 1. STAMP.—AGREEMENT.—CONTRACT.—

The proviso in the Stamp Act, 55 Geo. 3, c. 184, Schedule part 1, "Agreement," which renders one stamp of 11. 16s. sufficient where a contract is contained in several letters, applies equally to letters written by an agent of the parties, as to those written by the parties themselves.

In a special action of assumpsit to recover certain wages and salary, the plaintiff in support of the contract gave in evidence four letters written by her father to the defendant. One of the letters was stamped with an agreement stamp of 11. 15s. On the part of the defendant it was objected, that the letters were inadmissible, on the ground that each of them should have been stamped with a 12 stamp. A verdict was found for the plaintiff, leave being reserved for the defendant to move to enter a nonsuit.

*Montague Chambers* moved accordingly. The question depends upon the construction of the proviso in the Stamp Act, 55 Geo. 3, 184, schedule, part 1, title "Agreement." The words are—"Provided, always, that where divers letters shall be offered in evidence to prove an agreement between the parties, who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of 11. 15s. although the same shall

in the whole contain twice the number of 1000 words or upwards." The present case does not fall within the terms of that proviso, as the letters were not written by the plaintiff himself, but by his father. An acknowledgment in writing of a debt by an agent of the debtor will not prevent the operation of the Statute of Limitations. *Howe v. Johnson*, 12 Black N. 577.

**Parsons, C. B.** There is no ground for this application. The proviso applies to letters written not only by the parties, but by their agents. If it were not so, letters written on behalf of a firm must be signed by every one of the partners. *Howe v. Johnson* is distinguishable from the present case. The object of the Statute was to exclude parol testimony of the admission of a debt barred by the Statute of Limitations, and therefore it was held, that the acknowledgment must be signed by the party himself. *Johnson v. Mansfield*, 11 B. & C. 210. **Platt, B.** The object of the Statute would be defeated if parties were considered by the admission of an agent, for in that case it would be necessary to give parol evidence of the agency. The reason cannot apply to the Stamp Act, the language of which ought to be very clear to warrant us in imposing an additional burthen on the subject. A signature by an agent is for this purpose the signature of the party himself; he in fact signs it by the hand of another.

Rule refused.

*Grant v. Maddox*. Hilary Term, 26th Jan. 1846.

### Common Pleas.

**WARRANT OF ATTORNEY.—STATUTE 1 & 2 VICT. c. 110, s. 9.—ATTESTATION OF EXECUTION.**

The attestation of execution of a warrant of attorney runs thus:—"Signed, &c., in the presence of H. W., attorney for the said W. Lord X., and expressly named by him, and attending at his request; and I hereby subscribe myself to be the attorney of him, having read over, and explained to him the nature and effect of the above warrant of attorney before the same was executed by him; and I hereby subscribe my name as a witness to the due execution thereof." The words "H. W." were in that person's handwriting. Held, that there had been a sufficient compliance with the statute, and that the attestation was therefore good.

A Rule had been obtained calling upon the plaintiff to show cause why a warrant of attorney, and the judgment entered up thereon, should not be set aside, on the ground of a defective attestation. The form of the attestation was as follows:—"Signed, sealed, and delivered in the presence of Henry Whittaker, 10, Lincoln's Inn, attorney for the said William Lord Kensington, and expressly named by him, and attending at his request; and I hereby subscribe myself to be the attorney of him, having read over and explained to him the na-

nure and effect of the above warrant of attorney before the same was executed by him; and I hereby subscribe my name as a witness to the due execution thereof." The attestation, except the words, "Henry Whittaker, 10, Lincoln's Inn," which were in the handwriting of Mr. Whittaker, and the words "William Lord Kensington," which were in the handwriting of Sir W. W. R. and (Counsel, Serjeants, showed cases in which the Statute was against the rule. *Talfourd and Byles, Serjeants*, were heard in support of it. The arguments are sufficiently adverted to in the judgment of the court.

Cur. adv. vult.

The judgment of the court was now delivered by Lord W. R. The question in the present case is, whether the warrant of attorney to confess judgment, which has been executed by the defendant, was properly attested within the meaning of the stat. 1 & 2 Vict. c. 110, s. 9. That statute requires, in order to give authenticity to the warrant of attorney, that there shall, at the time of its execution, be present an attorney of one of the superior courts on behalf of the person executing, expressly named by such person, and attending at his request, to inform him of the nature and effect of such warrant, before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person so executing, and state that he subscribes as such attorney. The attestation in the present case was in these words.—[His lordship here read the form of the attestation.] To this attestation two objections were taken:—First, that there was no proper subscription of the name of the attesting witness, the name appearing in the middle and not at the foot of the attestation, and that it was uncertain whether the words subsequent to the name were to be considered as the words of Henry Whittaker or not. Now, in all cases, it must necessarily be a matter of extrinsic evidence, whether or not the name be in the hand-writing of the attesting witness, and, in the present case it appears that it is so. The precise place, therefore, in which the witness's name is found, can only become material by a reference to the provisions of the statute, which requires that the witness shall subscribe his name, not at the foot of the warrant of attorney, but as a witness to "the due execution thereof." It seems to us that the name of the witness has not been ineptly placed in the middle of the attestation, and, as there is no other subscribing witness than Whittaker, the concluding words of the attestation must be taken, according to the primary rules of grammatical construction, to be spoken by the attesting attorney.

The second objection urged was, that the attestation does not literally comply with the act, it not containing a declaration that Whittaker was the attorney of the defendant, or that he signed as such; and several cases were cited in support of that objection, all of which, we



think, may be distinguished from the present. The first is that of *Poole v. Hobbs*, (8 Dowl. 118.) In that case the attestation was, "Witness, George Edwards, defendant's attorney, named by him, and attending at his request." There the attestation contained no express statement that he subscribed as attorney for the defendant, nor anything that could be considered as an equivalent expression. The next case is *Potter v. Nicholson*, (8 M. & W. 294), and there the attestation was defective in not stating that the witness subscribed as such attorney. In *Edington v. Holland*, (9 M. & W. 659), the attestation was held insufficient, because it did not contain any express statement that the witness was the defendant's attorney, the expression that he subscribed as the attorney, not amounting to a declaration that he was such attorney. The next case cited was *Everard v. Poppleton*, (5 Q. B. Rep. 181), and there also the attestation was held defective, as not containing any statement that the witness subscribed as such attorney. The last case, and the one most relied upon, was that of *Hibbert v. Barton*, (10 M. & W. 678.) The objection urged in that case was, that the attestation did not contain an express allegation that the witness was the attorney employed in the transaction, but only that he witnessed as the attorney. The present case, however, is, we think, distinguishable from all these, for the attestation contains the words "Signed, &c., in the presence of Henry Whittaker, attorney for the said William Lord Kensington, and expressly named by him, and attending at his request," &c. That appears to us quite a sufficient allegation of the witness attending and acting in all respects in the business of the defendant as his attorney; and this view is supported by the express authority of *Knight v. Hasty*, (12 L. J. N. S. Q. B. 293.) We also think the words immediately following the signature, "I hereby subscribe myself, &c.," are equivalent to an allegation that the witness subscribed as such attorney.

Rule discharged, with costs.

*Lewis v. Lord Kensington.* Hilary Term, 1846.

## CHANCERY CAUSE LIST.

### Master of the Rolls.

Easter Term, 1846.

#### JUDGMENTS (reserved.)

Bennet v. Cooper, cause.  
Earl Nelson v. Lord Bridport, exons.  
Haldenby v. Spofforth, fur. dirs. and costs.  
Sparling v. Parker, fur. dirs. and costs.  
Hulkes v. Beauclerk, cause.  
Clarke v. Tipping, cause.  
Beisferth v. Badham, fur. dirs. & costs.  
Lockhart v. Hardy, exons.  
Bainbridge v. Baddesley, dem.  
Nelson v. Duncombe, Duncombe v. Nelson, 2 causes.

#### PLEAS AND DEMURRERS.

Part heard, *Tristram v. Roberts.*

#### CAUSES.

1st Cause day, Trinity Term, *Walton v. Potter.*

Trinity Term, *A. J. B. Hope v. Hope.*

Do. *A. J. Hope v. Same.*

Do. *H. J. Hope v. Same.*

Until mentioned, *Richardson v. Horton*, Same v. Taylor, Same v. Derby, fur. dirs. and costs.

Trinity Term, Attorney-General v. Bedingfield. S. O. to file suppl. bill, *Hale v. Bexley*, Same v. Same, exons.

Trinity Term, *Campbell v. Crook*, exons. S. O. part heard, *Lothbridge v. Chetwode*, and petition.

Part heard, *Augerand v. Purry.* Trinity Term, part heard, *Hedgkinson v. Cooper*, and exons.

*Hedges v. Harper*, fur. dirs. and costs. *Lockhart v. Hardy*, *Thomas v. Hardy*, *Newman v. Hardy*, *Hardy v. Lockhart*, *Lockhart v. Arundell*, Same v. Lee, Same v. Hardy, Same v. Crouch, fur. dirs. and costs.

*Matthews v. Bagehaw*, Same v. Leyburn. Part heard, *Lacklison v. Blane*, Same v. Hodgson, fur. dirs. and costs suppl.

Part heard, *Churchman v. Capon*, fur. dirs. and costs.

1st Cause day, Attorney-General v. Ironmongers Co., fur. dirs. and costs.

*Horne v. Sterling*, Same v. Same, fur. dirs. and costs and petition.

After report, part heard, *Richardson v. Horton*, Same v. Taylor, Same v. Derby, exons.

*Woodcock v. Tarbuck.*

Trinity Term, *Kiuder v. Lord Ashburton*, Same v. Pennell.

*Barnes v. Hastings.* Attorney-General v. Roose.

Short, *Gray v. Edwards*, Same v. Breadmore, Same v. Edwards, fur. dirs. and costs and petition.

25th April, *Fordyce v. Bridges.*

Trinity Term, *Hargrave v. Hargrave*, fur. dirs. and costs.

*Lancaster v. Evors*, Same v. Morley.

*Mette v. Alderson*, *Henrichson v. Henrichson*, fur. dirs. and costs.

*Sanderson v. Dobson.*

*Elliot v. Morris.*

*Plenty v. West.*

Attorney-General v. Evans, Same v. Davis.

*Dowden v. Hook.*

Attorney-Gen. v. Corporation of Leicester, fur. dirs. and costs.

*Martin v. Sedgwick.*

*Wilson v. Sir William Edon.*

*Wilson v. John Edon.*

*Brown v. Bullpitt.*

*Stone v. Stone.*

*Hulme v. Chitty*, Same v. Same, fur. dirs. and costs.

*Lindgren v. Lindgren*, fur. dirs. and costs.

*Suckmore v. Dimes*, *Fenton v. Same*, exons.

*Jones v. Maurice*, *Davies v. Maurice*, Same v. Jones, fur. dirs. and costs.

*Madgwick v. Madgwick*, fur. dirs. and costs.

Short, *Conner v. Ainge.*

*Jackson v. Jackson*, Same v. Same, Same v. Same.

Attorney-General v. Maclean.

*Price v. Watkins.*

*Waddeburn v. Waddeburn*, Same v. Colwill,

*Douglas v. Same*, exons.

*Hodgkinson v. Wyatt*, exons, fur. dirs. and costs.

*Clark v. Chuck.*

*Bagehaw v. Parker*, Same v. Same.

*Stanton v. Scott*, Same v. Power, fur. dirs. and costs.

Short, *Robinson v. Robinson.*

*Whitcher v. Penley*, fur. dirs. and costs.  
*Short, Jones v. Jones*, fur. dirs. and costs.  
*Meire v. Williams*.  
*Best v. Davies*, exons.  
*Bather v. Kearsley*, Same v. Fraser.  
*Meyer v. Menitriou*, exons.

## COMMON LAW CAUSE LIST.

Crown Paper.—Queen's Bench.

Easter Term, 1846.

For Wednesday, April 23.

*London*.—The Queen v. Mayor of London.  
*Essex*.—The Queen v. H. J. Congers and others,  
 part heard.

*London*.—The Queen v. William Jones.  
*Kent*.—The Queen v. The Mayor of Sandwich.  
*Kent*.—The Queen v. George Buchanan.  
*Middlesex*.—The Queen v. The Inhabitants of  
 Mile End Old Town.

*Salop*.—The Queen v. The Inhabitants of Gourn-  
 ton.

*Cornwall*.—The Queen v. The Inhabitants of St.  
 Gennys.

*Yorkshire*.—The Queen v. Joseph Foster.  
*Devon*.—The Queen v. The Inhabitants of High  
 Bickington.

*Devon*.—The Queen v. The Inhabitants of Ash-  
 burton.

*Middlesex*.—The Queen v. William Bond, Esq.  
*Wills*.—The Queen v. The Inhabitants of Brad-  
 ford.

*Surrey*.—The Queen v. Thomas Paynter, Esq.  
*Kent*.—The Queen v. The Mayor of Dover.

*Yorkshire*.—The Queen v. The Inhabitants of  
 Keighley.

*Ely*.—The Queen v. The Inhabitants of Chatham,  
 Kent.

*Yorkshire*.—The Queen v. The Inhabitants of  
 Northwram.

*Devon*.—The Queen v. The Inhabitants of Newton  
 Ferrers.

*Surrey*.—The Queen v. The Churchwardens, &c.,  
 of St. Mary, Lambeth.

*Leicestershire*.—The Queen v. The Inhabitants of  
 Radcliffe Culey.

*Lincolnshire*.—The Queen v. The Trustees of the  
 River Wolland.

*Huntingdonshire*.—The Queen v. The Inhabitants  
 of Molesworth.

*Devon*.—The Queen v. The Inhabitants of Holms.  
*Essex*.—The Queen v. The Inhabitants of Saffron  
 Walden.

*Bucks*.—The Queen v. The Churchwardens, &c.,  
 of Aylesbury with Walton.

*Middlesex*.—The Queen v. The Inhabitants of St.  
 Giles-in-the-Fields.

*Surrey*.—The Queen v. Thomas Pocock.  
*Middlesex*.—The Queen v. The Inhabitants of  
 St. Clement's Danes.

*Staffordshire*.—The Queen v. Thomas Pratt.  
*Northumberland*.—The Queen v. Newcastle and  
 Carlisle Railway Company.

*Middlesex*.—The Queen v. The Inhabitants of St.  
 Anne, Westminster.

*Worcester*.—The Queen v. Birmingham and Glou-  
 ceater Railway Company.

*Devon*.—The Queen v. James Griffin.  
*New Sarum*.—The Queen v. The Inhabitants of  
 St. Martin.

*Middlesex*.—A. R. Hamilton v. The Queen in  
 error.

*Middlesex*.—The Queen v. London, Westminster,  
 and Vauxhall Iron Steam Boat Company.

*Northumberland*.—The Queen v. Inhabitants of  
 Walbottle.

*Middlesex*.—The Queen v. The Inhabitants of  
 Walford, Herts.

*Bucks*.—The Queen v. The Inhabitants of Little  
 Marlow.

*Surrey*.—The Queen v. The Inhabitants of Cross-  
 dall, Hants.

*Cornwall*.—The Queen v. The Inhabitants of  
 Mylor.

*England*.—The Queen v. Commissioners of  
 Stamps and Taxes.

*Middlesex*.—The Queen v. Inhabitants of St. Paul,  
 Covent Garden.

*London*.—Charles Wright v. The Queen in error.

## Court of Exchequer.

Remanet Paper of Easter Term, 9 Vict., 1846.

Enlarged Rules.

To 6th day.—*Euluceta and others v. Miller and  
 others.*

To 6th day.—*Keys and others, executors, v.  
 Irvine.*

To 6th day.—*Bentley v. Carver and others.*  
 To 10th day.—*Tolson v. Bishop of Carlisle and  
 others.*

To 10th day.—*Tomlinson, clk., v. Boughhey, Bt.  
 and another.*

New Trials of Michaelmas Term last.

*Liverpool*.—Holden v. Liverpool New Gas and  
 Coke Company.

(Partly heard on 28th January.)

*Yorkshire*.—Doe (Atkinson) v. Fawcett and  
 others.

*Bristol*.—Price et al. v. James; South v.  
 Strawbridge.

New Trials of Hilary Term last.

*Middlesex*.—Nash v. Kemshead.  
 .. .. Girard v. Richmond.

.. .. Hunter v. Clarke.  
 .. .. Walker v. Remmett.

*London*.—Patt and others, assignees, v. Eytou and  
 another.

.. .. Ross v. Hill.  
 .. .. Warne v. Bromley.

.. .. Forsaith v. Allan.  
 .. .. Roberts v. Grunson.

.. .. Bennett v. Deacon.

CUR. AD VULT.

Patteson and others v. Holland and others.  
 To stand over till the *sci. fa.* in Queen's Bench  
 is determined.

Doe Woodall and others v. Woodall and another.  
 Benson v. Chapman.

Demurrer Paper of Easter Term, 9 Vict., 1846.

Wednesday. April 15  
 Thursday . . . 16

Friday . . . 17 } Motions in arrest of judg-  
 Saturday . . . 18 } ment.

Monday . . . 20  
 Tuesday . . . 21

Wednesday . . . 22 } Special arguments.

Gordon and others v. Ellis and another.  
 Wright v. Burroughs and others.

Powles Pub. Off. v. Page.  
 Gibbs and another v. Flight and another.

White, administrator, v. Hancock.  
 Beard v. Egerton and others.

Cundell and another v. Dawson.  
 Cooper v. Shephard.

Brown v. Gill.  
 Pryce v. Belcher.  
 Benham v. Earl of Mornington.  
 Easton v. Pepploe.  
 Smith v. Shirley.  
 Gayard v. Sutton.  
 Turner v. W. Browne.  
 Tinniswood v. Pattison.  
 Tuckwell v. Morris.  
 Carr v. Maude.  
 Friday, . April 24 }  
 Wednesday . . . 29 } Special arguments.  
 Friday . . May 1 }

### Exchequer of Pleas.

Easter Term, 1846.

SPECIAL PAPER.

For Judgment.

Duncan v. Benson, dem.

(Heard 2nd June, 1845.)

Doe d. Haw v. Earle and another, special case.

(Heard 21st Jan. 1846.)

Doe d. Lloyd and another v. Ingleby, special case.

(Heard 21st Jan. 1846.)

Cooks and another v. Turner and others, special case.

(Heard 19th Feb. 1846.)

For Argument.

Offor v. Windsor, dem.

Ashley and others v. Pratt and others, special case, by order of the late Lord Abinger.

Griffiths v. Pyke, dem.

(To stand over at the request of parties until special case settled.)

The Dean and Chapter of Ely v. Cash, special case, by order of the Lord Chancellor.

Trail, Esq. v. Bonney, special case, by order of Mr. Baron Alderson.

### PEREMPTORY PAPER.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

Date Rule Nisi, 27th Jan. 1846.—Benn v. Stockdale and another; Stockdale and another v. Benn.

22nd Jan. 1846.—Benyon v. Margaret Jones.

24th Jan. 1846.—Mummary v. Parcel.

15th Jan. 1846.—Way v. Smith and another; Band v. Hill.

24th Jan. Doe several dems. of Lloyd and another v. Roe; Berrington v. Griffith.

### NEW TRIAL PAPER.

For Easter Term, 9 Vict. 1846.

For Judgment.

Moved Michaelmas Term, 1845.

Bristol, Mr. Justice Erle—Kynaston and others, assignees, &c. v. Davies and others.

(Heard 6th Feb. 1846.)

London, Secondary.—Brown and others v. Wilkinson and another.

(Heard 10th Feb. 1846.)

For Argument.

Moved Michaelmas Term, 1845.

Middlesex, Lord Chief Baron.—Bunnett v. Smith. Anglem, Mr. Baron Parks.—Hughes v. Buckland and others.

Northumberland, Mr. Baron Rolfe.—Knight, clk. v. Marquis of Waterford.

Stafford, Lord Denman.—Aston v. Perkins and another.

(28th Jan. 1846, part heard; a stet processus suggested by the court to stand over for Mr. Gray to consult his client.)

Moved Easter Term, 1844.

Liverpool, Mr. Baron Rolfe.—Rogers and another v. Maw.

Moved Hilary Term, 1846.

Middlesex, Lord Chief Baron.—Thornett v. Harries; Beeton v. Tims.

London, Lord Chief Baron.—Castlesman v. Copper; Lamert v. Heath; Bold and another v. Wainwright; Ackerman and others v. Ehrensparger.

Moved Michaelmas Term, 1845.

Staffordshire, Mr. Justice Williams.—Foley v. Botfield.

(22nd Jan. 1846.—Restored to the paper on the application of Mr. Serjeant Talfourd.)

Moved after the 4th day of Hilary Term, 1846.

Middlesex, Mr. Baron Platt.—Masters v. Abithol.

### Easter Term, 1846.

Wednesday April 15 } Banc, Peremptory Paper after Motions.

Thursday . . . 16 Ditto, before Motions.

Friday . . . 17 } Nisi Prius, Middlesex 1st Sitting.

Saturday . . . 18 Ditto.

Monday . . . 20 Banc, Special Papers.

Tuesday . . . 21 Ditto.

Wednesday . . . 22 } Banc, Special Papers.—Nisi Prius, London 1st Sitting.

Thursday . . . 23 Ditto.

Friday . . . 24 } Nisi Prius, Middlesex 2nd Sitting.

Saturday . . . 25 Banc, Crown Cases.

Monday . . . 27 Banc, Special Paper.

Tuesday . . . 28 Banc, Errors.

Wednesday . . . 29 Banc, Special Paper.

Thursday . . . 30 } Nisi Prius, London 2nd Sitting.

Friday . . May 1 Ditto, by adjournment.

Saturday . . . 2 Ditto.

Monday . . . 4 } Banc, Special Paper.—Nisi Prius, Middlesex 3rd Sitting.

Wednesday . . . 5 Ditto.

Thursday . . . 6 Ditto.

Friday . . . 7 Ditto.

Friday . . . 8 Ditto.

### LEGAL OBITUARY.

March 28th.—Thomas Shepherd, Esq., a bencher of the Middle Temple. He was called to the bar 28th November, 1806.

April 11th.—At Meadfoot House, Torquay, Devon, Barron Field, Esq., late Chief Justice of Gibraltar, aged 60. He was called to the bar 23rd June, 1814.

April 15th.—Of palsy, Samuel Dendy, Esq., at his residence in Montague Street, Russell Square, aged 68, of the firm of Dendy and Morphett, of Bream's Buildings, Chancery Lane, solicitors. He was admitted in Easter Term, 1801, and practised as a solicitor, from his admission till his death, a period of 45 years.

The Legal Observer.

SATURDAY, APRIL 25, 1846.

CONVEYANCING REFORM.  
AND  
PROFESSIONAL REMUNERATION.

We understand that a considerable effort will be made during the remainder of the present session, to pass the several important bills which we lately adverted to, for shortening conveyancing forms. Amongst them will be short forms for Marriage settlements, for Mortgages, and other deeds of frequent use in conveyancing practice.

Our readers are aware that the forms legalized by the acts of last session, (8 & 9 Vict. cc. 119 & 124,) for conveyances and leases—being wholly voluntary,—have rarely, if ever, been adopted. It has been rumoured that hereafter their use will be compulsory. Should the legislature be disposed, with respect to the past, or any future acts framed on this principle, to sanction an enactment aiming at the compulsory use of these common forms, we question whether such a provision could be practically successful. It would scarcely be proposed that purchasers of land who did not choose to repose on this conveyancing bed of Procrustes should forfeit, (not indeed part of their limbs, but) their estates! It is anticipated, however, that the taxing masters would lop off their surplus extremities; but it is forgotten that they will only have an opportunity in one case in a hundred, or perhaps in a thousand, to wield their pruning knives. The larger number of practitioners, in the course of a long life and extensive business, meet with no instance of a taxation between themselves and their clients. This is the result of the almost inviolable confidence of the one, and the honourable conduct of the other.

The recent acts 8 & 9 Vict. cc. 119, 124, provided that the taxing officer should consider *not* the length of the deed, but only the skill and labour employed, and responsibility incurred; and it has been rumoured, that in the further acts about to be brought in, the taxing masters will be required to disallow the charge for the long form, if he be of opinion that the short one would have sufficed.

Judging from a book just published by one who, from his present position and former works, must have advised, if not originated these measures, we should conclude that there is no intention to make the adoption of these forms compulsory. The work to which we allude is the third edition of Mr. James Stewart's Practice of Conveyancing. This gentleman is the treasurer of the Law Amendment Society, of which Lord Brougham is the president, and in which society it appears these bills were prepared and settled. Mr. Stewart, in this his latest work, the preface to which must have been written since Lord Brougham announced the intended new bills, distinctly says, that "these forms may or may not be adopted, as the practitioner thinks advisable. If they are not found suitable or convenient, it is neither necessary nor desirable to force them into use." He then proceeds to state the intention of these acts, and to consider the objections which have been urged against

\* Comprising every usual deed analytically and synthetically arranged. Part I contains a collection of common forms, purchase deeds, leases and annuity deeds, including select precedents under the Copyhold Enfranchisement Act, 4 & 5 Vict. c. 35, and the Conveyancing Acts of 1845. By James Stewart, Esq., and Harris Prendergast, Esq., Barristers at Law. London: W. Benning & Co., 1846.

them. We deem it fair to let the learned author state his views on the subject.

"The main object," he says, "of the legislature in passing these acts, is to enable the conveyancer by a short reference to obtain the benefit of what are called the 'Common Forms in Conveyancing.' With this view, in the schedule to these acts are set out in one column, (column 2,) these same forms, and in the other column, (column 1,) some few words which are intended pithily to express the meaning and intention of the forms detailed; and then it is enacted, that, whenever any party to any deed expressed to be made in pursuance of the act, shall employ in any such deed, any of the form of words contained in column 1 of the schedule, such deed shall be taken to have the same effect, and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same schedule.

"The first question then is, can this be done? Is there anything here attempted to be enacted which is beyond the power of the legislature? And to this there can scarcely be but one answer. If the parties to the deed choose to comply with the requirements of the act, they will be bound by its enactments. It will be a good exercise of legislative power.

"Is it then advisable to call in the legislative aid thus offered? And to what extent? These may seem more difficult questions, and we shall endeavour to answer them.

"1. *First*, it may be reasonably said, if I avail myself of it, how shall I, as an honest practitioner, be properly remunerated for my trouble, to which remuneration I have a just right, the payment for every legal instrument being by its length? But to this there is a ready answer, for by these acts it is provided that remuneration for any deed under them shall not be by length, but according to the 'skill, labour, and responsibility incurred,' which words are intended to let in a new mode of estimating remuneration.

"2. *Next*, it may be said, either that the words in the first column do not sufficiently or properly express the meaning of the words in the second column, or that the forms used in the second column are not proper or sufficient forms. This may be true, (although it does not seem to be so as to these acts,) but, admitting it fully, if stated in fairness, these objections only apply to these particular acts, and not to the theory on which they are founded, which supposes that in the second column the most complete and correct forms are given, and that in the first the most accurate and simple reference is made to them. This objection merely involves the repeal of the present act, and the passing of more complete acts on the same principle, — a task comparatively easy and practicable. In the meantime it may be well for the practitioner to consider whether these objections do apply to the forms in the schedule to these acts.

"*Thirdly*, it may be argued, that in fact, the plan, although apparently plausible, is really

not adapted to the practice of conveyancing, which consists rather of an adaptation of these common forms to the particular matter in hand, than their bodily insertion in the particular instrument. This is undoubtedly a good objection to a certain extent. It is only applicable, however, to transactions of a more special character. But even in these, it is conceived, that there are very few deeds prepared which do not contain some one or more of the common forms of conveyancing; and certainly many of the more simple transactions consist of little but a transcription of them. Is it not a well-known fact, that in most offices in which the usual conveyancing transactions are common, the forms are kept with blanks for the names of the parties, which are inserted as occasion requires? Nay, has not the system of reference, on which these acts are framed, been for many years in force in the practice of conveyancing? It is exceedingly common in abstracts of title to see such expressions as these:—'Usual covenant for good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance.' 'Usual trustee clauses.' 'Usual clauses for maintenance and advancement.' 'Usual powers of sale and exchange,' &c. &c. If this be not an exact precedent for these acts, surely it is a good illustration of the manner in which they may be usefully employed, and a proof of the extent to which a similar practice is adopted.

"*Fourthly*, it may also be said, that allowing the plan to be in all other respects advisable, yet, that the using it involves considerable risk and difficulty. The words in the first column may be improperly used, and thus the act will not come into operation. Now this, to a great extent, another mode of stating the second objection. If it is not already done, it may surely be possible to frame words which shall be easily adapted to any instrument in which it is wished to use them. But it is further to be observed, that this difficulty is provided for by these acts, by which it is enacted, that 'any deed or part of a deed which shall fail to take effect by virtue of this act, shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made.' Under this provision, therefore, the deed could not fail in operation, because the words used would have an independent meaning given to them, and if there was an intention discoverable in the deed to adopt the form in the act, a court of equity would, no doubt carry this intention into effect, if applied to.

"These are the objections which have been urged to these acts, for the editor cannot consider it to be in itself an objection that they proceed on a new and untried principle.

"This may be a good objection if the principle be a bad one, but if this cannot be proved, it is surely no real objection. Neither will conveyancers be deterred from adopting these acts by their having received, in the first instance, some opposition. It is quite true that this does not prove them to be good or safe measures, but neither does it prove them bad or unsafe. They

should be judged by their merits. Those who approve of them have no right to object to opinion, or even to ridicule; but the question is, whether the measures are justly entitled to either? It must also be remembered, that many conveyancers of high character have recommended plans somewhat similar, among whom may be mentioned the late Mr. Butler and the late Mr. Tyrrell."

Mr. Stewart next briefly states the advantages which it appears to him may be obtained from these acts.

"1. They will greatly save the time and labour of the practitioner, and this is a real saving of money.

"2. They will establish, when they are adopted, settled forms which will at once be recognised and understood by all, and thus assist in rendering the practice of conveyancing, to a great extent, uniform, which is now fluctuating and variable, more especially in the provinces, where so large a part of conveyancing business is transacted.

"3. They will render legal instruments coming under their operation, less liable to mistake or error from defective copying or omissions.

"4. By lessening the expenses, these acts will greatly facilitate the alienation of property, not so much in the particular transactions as in all subsequent dealings with respect to it.

"These observations are intended to apply not only to the acts already passed, but to similar acts having a more extensive operation, which should include all other common forms in conveyancing, more especially those in mortgages, settlements, and wills, both of real and personal property, to all of which the plan seems peculiarly applicable."

We are looking with some anxiety for these new bills, and particularly for the clauses in which the subject of remuneration will be dealt with. Power should at all events be given to the Lord Chancellor and the Master of the Rolls, to make rules and regulations under which the taxing officers may make *ad valorem* allowances which, we presume, can alone fulfil the intention, (as expressed in the acts of last session,) of estimating as well the responsibility incurred as the skill and labour employed; and the Masters should be authorised to make all just and reasonable allowances according to the difficulty and importance of the business transacted, and the value of the property in question.

## NOTES ON EQUITY.

### CREDITOR'S SUITS. — PLAINTIFF'S RIGHT TO EXACT CONTRIBUTION FOR EXPENSES.

The language of decrees in administration suits is, that "such creditors, not parties, as shall come in before the Master to

prove their debts, are, before they shall be admitted creditors, to contribute to the plaintiff their proportion of the expenses of the suit to be settled by the Master." Upon this direction, the Master of the Rolls, Lord Gifford, in *Lockmore v. Brazier*,<sup>a</sup> said, "I do not believe that there is any instance of such contribution being actually required. Each creditor pays the expenses incident to the proof of his own debt, and he usually pays nothing more."

This amounts to no more than this,—that, so far as Lord Gifford's information extended, contribution had not been insisted upon. Cases, however, do occasionally occur in which the demand is made from those who, not being parties, have derived benefit from the suit.

In *Shartley v. Selby*,<sup>b</sup> the Vice-Chancellor held that, "unless the plaintiff calls for contribution before a creditor is admitted under the decree, he waives all claim to such contribution."

The plaintiff's solicitor, accordingly, in practice uniformly takes care to stipulate for contribution before any creditor is admitted to have the benefit of the decree. In a late case, *Thomson v. Cooper*,<sup>c</sup> where the decree contained the usual direction, that all persons coming in to prove, not being parties to the suit, should contribute, and where it appeared that certain persons so coming in to prove, gave the plaintiff an undertaking for contribution, it afterwards turned out that the fund was insufficient to pay the plaintiff his costs; whereupon he presented his petition praying that the persons in question should be directed to pay their proportion of the expenses of the suit, upon the principle that as they had had the benefit of the suit they should contribute to the expenses of the plaintiff.

The Vice-Chancellor *Knight Bruce* was apparently not disposed to rest his decision on the stipulation or undertaking for contribution. He went upon the reason and equity of the thing itself. "It could not be just," he said, "that in a suit instituted for the benefit of all the creditors, one alone should bear the burden when others have had the benefit. He did not decide whether the case was within the precise literal sense of the expression in the decree; but the general principle was, that where the suit appeared to have been properly instituted, and the fund to be administered was insufficient to pay the plaintiff his costs, those who had come in

<sup>a</sup> 1 Russ. 72. <sup>b</sup> 5 Madd. 447. <sup>c</sup> 2 Coll. 87.  
D D 2

and received a benefit under the decree must contribute to make good that loss which the plaintiff had borne on behalf of all the creditors. The division of the costs must be in proportion to the amount proved received."

We may therefore infer that an express stipulation for contribution is unnecessary, and that the neglect of a positive call for contribution will not be construed a waiver of the claim in a case where the claim on its own merits is well founded.

## THE CHARITABLE TRUSTS BILL.

It is much to be regretted that this bill has not been confined to the useful object of regulating and superintending the smaller class of charities, regarding which it is supposed no effectual redress could be obtained in Chancery, on account of the unavoidably large amount of costs in that court. The bill comprehends three distinct classes of powers and duties:—1st, Those which affect all charities. 2ndly, Those limited to charities of an income not exceeding 100*l.* a-year. 3rdly, Those which relate to charities vested in municipal corporations.

In the number of the Edinburgh Review which has just been published, we find an able article on the powers proposed to be conferred on the commissioners:—

"They are such as no English court, indeed, such as no English sovereign, has ever possessed. The bill is a step in centralization, as much in advance of the Poor Law Amendment Act, as that act was in advance of all that had been done before. That act created about sixteen thousand guardians; but it carefully excluded the commissioners from any share in their nomination. The charity commissioners are themselves to nominate. They will probably appoint several hundred trustees every year. In the course of a few years all the trustees of charities under one hundred pounds a-year, and of the municipal charities, will be their nominees. And whether appointed by them or not, the whole body will be under their control. They may harass them by inquiries, annoy them by regulations, censure them by their reports; or, on the other hand, assist them in their prospective arrangements, and sanction their past conduct."

To defend such extraordinary powers, it must be shown, says the reviewer, first, that they are necessary, or at least clearly and undeniably expedient; and secondly, that the commissioners to whom they are to be confided, are likely to be properly selected, and when selected, adequately controlled. The writer thus proceeds:—

"It cannot be said that any of their general

powers are absolutely necessary; and we are inclined to doubt whether all of them are expedient.

"The two first powers, those to authorize the selling, mortgaging, exchanging, and leasing all charity lands, and the compromise of all suits, might unquestionably, in the hands of corrupt, or merely careless, commissioners, be the means of nearly unlimited jobbing. Under the first they may authorize almost any use whatever to be made of the charity property. It may be thrown into a park, or removed out of sight, or converted into money, or let to a friend; and, as every transaction which they sanction is to be valid at law and in equity, there will be no means of correcting their errors. Under the second power they may screen any amount of fraud or misconduct. They are empowered to put a final bar to all actions and claims on the part of a charity. We do not say that these powers ought not, in the present state of public morality, to be given; but we venture to affirm, that if such powers had been granted a hundred years ago, or perhaps fifty years ago, very little land would now be in the hands of charities."

The powers given to the commissioners over charities not exceeding 100*l.* a-year, are dictatorial. But the reviewer admits that this is a case for a dictatorship. "To pass one of these charities through an expensive court is to ruin it. All forms are expensive; therefore the process must be summary. All inquiries carried on from a distance are expensive; therefore the tribunal must be local. All appeals are expensive; therefore its sentence must be decisive. From these premises the powers given to the commissioners are logically inferred."

The writer next proceeds to the powers conferred with respect to *municipal charities*; and he fears that on the whole a balance of inconvenience will be the result:—

"The 47th section enables the commissioners to interfere, if ten freeholders complain not of any actual abuse, but that an impartial administration of the trust is not secured. If, for instance, there are thirteen trustees, ten Tories and three Whigs, some electioneering partisan, or some attorney, anxious, like *Gil Blas*, *pour le bien des pauvres*, may use ten householders as his puppets to support a complaint of partiality. He will try to show that Tory old women are better attended to than Whig old women; or that a Tory pauper has been made porter, and a Whig pauper dismissed; and he will propose seven Whigs as additional trustees. The existing trustees will fight every case of supposed partiality, and they will maintain that, even if additional trustees are to be appointed, those proposed are the very worst that could be selected; that they are men of irreligious habits, worse morals, and gross conversation. The proposed trustees will demand a full oppor-

tunity to defend their characters. The question whether *A. B.*, *C. D.*, *E. F.*, *G. H.*, *J. K.*, and *L. M.*, are or are not men of sound opinions, or irreproachable behaviour, will become a party contest. Hosts of witnesses will depose on each side, and the peace of the borough will be disturbed for years."

Such is the view taken by a journal which has always been an advocate of popular measures both of political and law reform; and the objections thus stated seem entitled to serious consideration.

## NEW BILLS IN PARLIAMENT.

### BANKRUPTCY AND INSOLVENCY.

THIS bill, introduced by Mr. Hawes, Mr. Masterman, and Mr. Wynn Ellis, "*to amend the Law relating to Bankruptcy and Insolvency*," recites that it is expedient to amend the laws relating to bankruptcy and insolvency, with a view to afford to creditors greater protection against fraud and wilful extravagance [than they now possess.] It is therefore proposed to enact as follows:—

1. Laws at variance with this act repealed.
2. Act to be construed beneficially for creditors.
3. Interpretation clause.
4. That a creditor being desirous of having a trader summoned according to the provisions of the act passed in the sixth year of the reign of her present Majesty, intituled, "*An act for the Amendment of the Law of Bankruptcy*," or of this act, may instead of personally serving such trader with an account in writing of the particulars of such creditor's demand with a notice thereunder, requiring immediate payment thereof, in the form specified in the schedule (A. No. 2,) to the said act for the amendment of the Law of Bankruptcy, serve such trader with an account in writing of the particulars of such creditor's demand, with a notice thereunto, requiring immediate payment thereof, conforming substantially with the form specified in the schedule, (A.) to this act.
5. That any such account and notice, and any summons to be issued as hereinafter mentioned, may be served either by a copy thereof being delivered personally to the trader, or by a copy thereof being sent by the post addressed to the trader at his place of business or residence, or then last known or usual place of business or residence in England, as described in such notice.
6. That whenever any creditor shall be desirous of sending any such account and notice or summons by the post, he shall, by himself or his agent, deliver, between the hours of nine in the forenoon and two in the afternoon, to the postmaster of any post-office where letters may, according to the regulations from time to time made by the Postmaster-General, be registered, such account and notice or summons, as a

letter duly addressed, to be registered for the purposes of this act, and give notice to such postmaster that such letter is to be sent pursuant to this act; and such postmaster shall thereupon, in the registry of such letter, make a special note of such notice having been given.

7. That after the delivery through the post of any such registered account and notice or summons, the receipt which shall, according to the regulations from time to time made by the Postmaster-General in that behalf, be given by the person to whom the same shall have been delivered, shall, on the application of the creditor who shall have sent the same and shall have given such notice, or his agent, and on payment of the sum of \_\_\_\_\_ be given up to him by the postmaster having the custody thereof.

8. That such receipt, if signed by the trader to whom such account and notice or summons shall have been so addressed, shall be conclusive evidence of his having been served with the same; and if signed by the wife or one of the family, or a clerk, servant or inmate of such trader, shall be evidence of his having been served with the same, if the court shall be satisfied that such account and notice or summons shall have come to the hands of such trader.

9. Form of affidavit substituted for the form in 5 & 6 Vict. c. 122, schedule (A. No. 1.)

10. That whenever, upon the appearance of any trader upon any such summons, he shall refuse to admit the demand or some part thereof, and shall make or offer to make a deposition in the form specified in the schedule (B. No. 2) to the said act for the amendment of the law of bankruptcy, that he believes he has a good defence to the demand, or so much thereof as he has not admitted, it shall be lawful for the court to require such trader, in addition to, or, if the court shall so think fit, in lieu of, his making such deposition to satisfy the court by other means, and on a private examination if the court shall think fit, that he has a good defence to such demand, or to so much thereof as he has not admitted, or to some and what part thereof; and in case he shall fail to satisfy the court that he has a good defence to the whole of such demand, or to so much thereof as he has not admitted, then, as to the demand or the part thereof (as the case may be) in respect whereof he shall so fail, the court may proceed as in cases in which a demand is not, as to any part thereof, admitted, and such deposition is not made.

11. That if any trader so summoned shall not come before the court at the time appointed (having no lawful impediment made known to and proved to the satisfaction of the court at such time and allowed,) or if on his appearance to such summons, or at any enlargement or adjournment thereof, (as the case may be,) he shall admit the demand or any part thereof, or fail to satisfy the court in manner hereinbefore mentioned that he has a good defence to the whole of the demand, it shall be lawful for the court (not less than fourteen days from the day of the service of the account and notice, as appearing by the affidavit filed as aforesaid, hav-



ing elapsed), at the request of the creditor, and on being satisfied as to the validity of the demand or any part thereof, and on proof being given of the service of such summons, to issue a warrant to some person or persons to be named by the creditor, and to be approved by the court.

12. The person to whom such warrant is addressed, empowered to enter the trader's premises, and take charge of his goods.

13. That the person or persons to whom any such warrant shall be addressed, shall and lawfully may continue in such charge, and in all other respects act by virtue of such warrant as hereinafter provided, until the fifteenth day inclusive from the day of appearance named in such summons, or until such later day inclusive as may from time to time, on the application of such creditor, be appointed by the court in that behalf, unless such trader shall before such day pay or secure or compound, to the satisfaction of such creditor, for the demand, or have entered, with two sureties to be approved by the court, into a bond in a sufficient penalty, conditioned for the payment of such sum as shall be recovered in any action already or thereafter to be brought for the recovery of such demand, and of the costs to be given in such action, and in such case, until the time at which the person to whom such warrant shall be addressed, shall be served with notice of the court having named a day on which such warrant shall cease to be in force.

14. Power to the court to extend or limit such period.

15. That in every case of a fiat in bankruptcy issued after the commencement of this act, against any trader on his own petition, the court shall, on his being declared bankrupt, appoint a solicitor to prosecute such fiat, who shall prosecute the same until a creditor's assignee shall have been appointed under such fiat, and some other solicitor have been retained by him; and the solicitor so appointed by the court shall, so far as circumstances may permit, act and have the same authority, rights and remedies as if he had been appointed by an assignee under such fiat.

16. Court may withhold protection from arrest.

17. That if any bankrupt or insolvent to whom protection from arrest shall have been granted, shall at any time fail to satisfy the court that his bankruptcy or insolvency has arisen otherwise than from fraud, gambling, wilful misconduct, or extravagance; or if it shall appear to the court that any bankrupt or insolvent has not discovered all his real or personal estate, and to whom, upon what consideration, and when he disposed of, assigned, or transferred any part of such estate, and all books, papers, and writings relating thereto; or if he shall not deliver up to or according to the order of the court, all such estate and all such books, papers, and writings relating thereto, as shall be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife and children); or if it shall appear to the court that any bankrupt or insol-

vent shall have removed, concealed, or embezzled any part of his estate, or any books, papers, or writings relating thereto, or to any of his transactions; or if it shall appear to the court that any bankrupt or insolvent has within three months before the date of the fiat or the filing of his petition for protection in contemplation of bankruptcy or insolvency, or being in insolvent circumstances, voluntarily paid, conveyed, assigned, transferred, charged, delivered or made over any goods or real estate whatsoever, to or for the use benefit or advantage of any creditor or any person who is or may be liable as surety for such bankrupt or insolvent; or if it shall appear to the court that any bankrupt or insolvent has, in contemplation of bankruptcy or insolvency, destroyed, altered, mutilated, or falsified any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of accounts or other document, with intent to mislead or defraud his creditors, or if it shall appear to the court that any bankrupt or insolvent has, within three months next preceding his bankruptcy or insolvency, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtained on credit from any person any goods with intent to defraud the owner thereof, or has within such time, with such intent, removed, concealed, or disposed of any goods so obtained, knowing them to have been so obtained; then and in any or either of such cases the court shall and is hereby required thereupon to withdraw its protection from arrest from such bankrupt or insolvent.

18. Assignees and creditors who have proved, to be deemed judgment creditors, and the court to grant certificates accordingly.

19. Such certificates to have the effect of judgments.

20. Execution on certificates granted to assignees to be issued by the assignees for the time being.

21. Execution on certificates not to issue against the body of any bankrupt or insolvent whilst entitled to protection from arrest.

22. Release from arrest under any certificate, to be granted only by the court which granted the certificate.

23. Pay, half-pay, and pensions of bankrupts to be applicable for the benefit of creditors.

24. Costs of prosecutions of bankrupts may be paid out of "Secretary of Bankrupts' Fund."

The following clauses for registering Bills of Sale, are important:—

25. That a memorial of any bill of sale which shall, after the commencement of this act, be made or executed by any person, may at any time, within twenty-one days next after the making or executing thereof, be registered as hereinafter provided.

26. That every such memorial shall be signed by one of the parties to such bill of sale, or his or their executor or administrator, and attested by a witness who shall have attested the execution of such bill of sale; which witness shall, by his oath or affirmation, to be sworn or af-

firmed before a judge of one of her Majesty's courts of law at Westminster, or a commissioner duly authorised to take affidavits and affirmations in either of the said courts, or a Master Extraordinary in the High Court of Chancery, or before the senior Master, [of the Common Pleas] or his deputy, which oath or affirmation they are hereby respectively empowered to administer, prove the signing of such memorial, and the execution, and the time of the execution of such bill of sale; and the said senior Master or his deputy shall write and sign a certificate thereof on every such memorial.

27. Contents of memorial.

28. That such Master shall be allowed for examining, entering, and filing every such memorial, and writing and signing such certificate thereof, the sum of seven shillings and no more; and for every search of such register, the sum of one shilling and no more; and for every inspection of any such memorial, the sum of sixpence and no more.

29. That every such bill of sale, whereof a memorial shall not, within such twenty-one days, have been so registered, shall, after such twenty-one days, be wholly invalid against the claims of such of the persons being, at or after the making or execution thereof, creditors of the person who shall have made or executed the same, as shall not be parties or privies, or have assented thereto.

The following clauses as to the administration of the effects of deceased traders, require consideration:—

30. That whenever any trader shall die, and no legal personal representative shall within one month after his dying be constituted, it shall be lawful for any creditor of such trader, whose debt shall amount to fifty pounds or upwards, or for any two of such creditors whose debts shall amount together to seventy-five pounds or upwards, or for any three or more of such creditors whose debts shall amount together to one hundred pounds or upwards, to apply to the court for such warrant as hereinafter mentioned; and on the court being satisfied of such trader having departed this life one month or more before such application, and of there not having been, previously to the making of such application, any legal personal representative of such trader constituted, and of the validity of such debt or debts, and of an account and notice requiring payment of the same, having been left at the then last known or most usual place of business or residence in England, of such trader, it shall be lawful for the court to issue a warrant in the form specified in schedule (D.) to this act to some person or persons to be named by such creditor, and to be approved by the court.

31. The persons to whom such warrants are addressed, empowered to take charge of the goods of such traders.

32. If a legal personal representative of such deceased trader not constituted within twelve months, an official assignee may be appointed, who may take out administration, and proceed as under a fiat.

33. Notice by advertisement to be given of application for such warrants, and appointment of official assignees.

34. That the costs and expenses of and consequent on the applying for, issuing and acting under any warrant issued under the authority of this act, shall be paid and satisfied as the court shall direct.

## NOTICES OF NEW BOOKS.

*A Treatise on the Law of Evidence, principally with reference to the Practice of the Court of Chancery and in the Master's Offices. Second Edition: comprising the Orders of the 8th of May, 1845, and the latest Statutory Enactments relating to Evidence.* By JOHN TAMLIN, Esq., of Gray's Inn, Barrister at Law. London: Benning & Co., Fleet Street. 1846. Pp. 386.

THE law of evidence is so important to every lawyer, that works affording any new views, or placing in any new light, or suggesting any new application of its principles and details, cannot fail to be favourably received. Notwithstanding the learned and comprehensive labours of Starkie and Phillips on Evidence, and of Selwyn, Roscoe, Stephens, and others on the Law of Nisi Prius, we welcome Mr. Tamlyn's book, which is distinguished from his predecessors, inasmuch as he treats peculiarly of evidence in reference to the *practice in the Court of Chancery*. This is a new application of the rules of evidence, and we proceed to acquaint our readers with the scope of the work and the manner of its execution, in order that our readers may themselves judge of its practical utility.

Mr. Tamlyn, in carrying his design into effect, has diligently examined the Equity Reports, and collected all the points of evidence within the scope of his plan; condensing the result into as small a compass as possible; and, in many instances, extracting the opinions of the judge, both on the principle and practice. In the progress of the work he has also investigated the reports of the courts of common law and of the ecclesiastical courts, especially such of the latter as relate to probate of wills, and has made due research into the decisions of the Privy Council and the House of Lords.

The following statement will show the important subjects comprehended in the work, and the arrangement of his materials which Mr. Tamlyn has adopted:—

1. The answer.
2. Production of documents:—Documents mentioned in the plaintiff's bill; documents mentioned in the defendant's answer; privileged correspondence and communications.
3. Examination of witnesses:—Solicitor and client, privileged communications; commission to examine witnesses abroad; examination of a witness *de bene esse*; examination of parties; examinations *voir dire*; bills and examinations *in perpetuum rei memoriam*.
4. Examinations of witnesses and evidence after decree.
5. Competency and credit.
6. Deeds, books, entries and documentary evidence.
7. Pedigrees, declarations, customs, traditions, manors.
8. Tithes.
9. Marriages, births, deaths.
10. Trial at law.
11. Mortgage.
12. Bankruptcy.
13. Wills:—Execution and attestation; the Wills Act, 7 Will. 4, and 1 Vict. c. 26; what is a sufficient signing by the testator and attestation by the witnesses; powers; soldiers in actual service and marines; petty officers, seamen, and marines; publication; competency of witnesses; revocation of wills; obliteration, interlineation, and other alteration of will; revival of revoked will; conveyance or act for will; after purchased lands; republication after Will's Act; nuncupative wills; probate; illegitimate children; presumptive evidence as to wills; parol evidence as to wills.
14. Parol evidence with respect to contracts, sales, purchases, trusts, mistakes, and other matters.
15. Sales and purchases.
16. Statutes of limitation and prescription.
17. Partnership.
18. Voluntary and fraudulent conveyances.
19. The Statute of Frauds.
20. Transactions between parties and their solicitors.
21. Stamps, taxes upon personal estate.
22. Commissions executed in the country; notice; form of summons; oath of witness; title of depositions; form of endorsement on exhibit.
23. Oaths and declarations.
24. Concluding chapter:—Pleadings; witnesses; evidence; what depositions can be read in the cause; in cause and cross-cause: from former causes; defendant out of jurisdiction: *lis mota*; contracts; international law; notice, agent, counsel, attorney; *lis pendens*, judgments, crown debts, bankruptcy; appeals; rehearings; grants of copyholds for lives; leases for lives or for years determinable on lives; estates determinable upon lives.

As an example of the execution of the author's design, we shall select the chapter on "Transactions between Parties and their Solicitors," &c. :—

"Lord Redesdale in his Treatise on Pleading,

4th edit., 189, says, 'Where bills have been filed to impeach deeds on the ground of fraud, attorneys who have prepared the deeds, and other persons concerned in obtaining them, have been frequently made defendants as parties to the fraud complained of, for the purpose of obtaining a full discovery; and no case appears in the books of a demurrer by such a party, because he had no claim of interest in the matter in question by the bill;' and then citing 2 Atk. 234, Lord Redesdale goes on to say, 'Indeed, an attorney under such circumstances, being brought as a party to the suit to a hearing, has been ordered to pay costs, apparently on the same ground as costs were awarded against arbitrators in cases of their misconduct.'

"In *Le Tesier v. The Margravine of Anspick*, (15 Ves. 159,) Lord Eldon said, 'Where an attorney or other agent is so involved in the fraud charged by the bill, that, though a conveyance or other relief cannot be prayed against him, a court of equity will, rather than that the plaintiff shall not have his costs, order that agent to pay them, if he is made a party, the plaintiff must pray that he may pay the costs, otherwise a demurrer will lie.'

"In *Bowles v. Stewart*, (1 Sch. & Lef. 209,) Lord Redesdale said, 'The duty of a solicitor does not bind him to assist his client in an act of injustice.'

"A bill to have an agreement for compromising a suit reformed imputed to attorneys who were solicitors to the defendants in that suit, that they had, in collusion with others, altered the draft as settled by counsel, in certain material respects, and, having got the same engrossed, the plaintiffs had executed the same, upon the faith of assurances that it corresponded with the draft; the defendants, the attorneys, demurred to the bill for want of equity, but the Vice-Chancellor thought they had properly been made parties. (*Beadles v. Burch*, 10 Sim. 332.)

"A barrister in Ireland, who appeared by the former transactions between the testator and himself to have been a very intimate friend of the testator, drew a will for him, by which he was appointed executor. By that will the testator devised his real estate subject to annuities and legacies, but did not dispose of his personal estate. The bill imputed fraud and imposition, but nothing of the kind was proved in the case, and the Lord-Chancellor of Ireland said, that no imputation on the personal character could result from the decree. The defendant in answer said, that he was not aware of the legal effect of the appointment of executor, nor did the same ever occur to his mind at the time he prepared the will. The effect of his appointment of executor was, (as the law then stood, but since altered by 11 Geo. 4, & 1 Will. 4, c. 40,) that he would be entitled to the personal estate for his own benefit. The court said that wherever a professional man is called on to give his services to a client, whether to prepare a deed or will, the law imputes to him a knowledge of all the legal consequences, and

requires that he should distinctly and clearly point out to his client all those consequences from which a benefit might arise to himself from the instrument so prepared; and if he fail to do so, a court of equity will deprive him of it. The defendant was declared to be a trustee of the residue of the personal estate for the benefit of the next of kin, and to account accordingly. (*Seagrave v. Kirwan*, 1 Beatty, 157.)

"General Wilford being seised of Ranelagh House and two pieces of land on which were six tenements, and also of another estate called the Ranelagh estate, comprising eighteen acres with twelve messuages thereon, made his will in 1822, whereby he devised his real estates and the residue of his personal estate unto his wife, (the plaintiff, and respondent). The testator had previously contracted for the sale of six acres of Ranelagh estate, the title to which being complicated, it was agreed that the testator should levy a fine of the land contracted to be sold. The defendant (appellant) was an attorney and heir-at-law of the testator, and as an attorney had done much business for him, and was employed on the sale; but he did not make his will; he was employed professionally in levying this fine; but instead of confining its operation to the six acres sold, he extended it to the whole Ranelagh estate, the effect of which, as the law then stood, was to revoke a devise thereof, and as heir-at-law he obtained judgment in ejectment of part of the property, and possessed himself of other parts thereof. The widow and devisee filed her bill against him in the Court of Chancery for relief, imputing fraudulent design, and afterwards a supplemental bill charging gross fraud, and praying that he might be declared a trustee for her, and that, as to the parts sold, he should join with her in conveying the same to the purchasers. There was contradictory evidence as to the defendant's knowledge of the testator having made a will, but Lord Wynford, in reviewing the evidence in the House of Lords, was of opinion that there was sufficient evidence of his knowledge of that fact. At the hearing before Sir John Leach, Vice-Chancellor, on the 23rd of February, 1826, two issues were directed, the second of which was, whether the defendant fraudulently omitted to inform the testator that such fine would, as to the property comprised therein, revoke any will of the testator which might be in existence, and the jury found the affirmative. The Lord-Chancellor refused a new trial, and on this finding and the evidence in the cause decreed that all the land except what was sold ought to be considered to have passed by the will to the wife, and that the defendant should convey the same to her; from which decree he appealed to the House of Lords, but that house affirmed it. The following rules of law were held by Lord Eldon:—

"That an attorney should not have the benefit of anything, where he derived that benefit from ignorance of that which he ought to know.

"That it is too dangerous to the interests of mankind, to allow that those who are bound to

advise, and who being bound to advise, ought to be able to give sound and sufficient advice, shall ever take advantage of their own ignorance—of their own professional ignorance, to the prejudice of others.

"That it was the duty of the appellant to have asked the testator whether he had made a will, and not to have gone beyond the necessity that arose in that case, for the purpose of making the title to the part sold complete.

"That it was impossible to follow up the cases of attorneys to their proper effect, unless the House of Lords did, as they did in the case of trustees, hold attorneys to this principle, that they shall give all the information they ought to give, and to this principle also, that they shall not plead ignorance of that which they ought to know.

"That there was principle enough in the policy of the law, as administered in courts of equity, to say the appellant must be considered a trustee of that property on which the fine ought not to have been levied.

"Lord Wynford agreed with all that had fallen from Lord Eldon, and held—

"That there is an established principle in the courts of equity, that no professional man can take advantage of his ignorance, or of his negligence, much less of fraud.

"That every attorney ought to know that a fine may revoke the will.

"That it would render all property in this country insecure, considering the confidence reposed in attorneys, if in such cases the House were to allow an attorney to take advantage of his own misconduct.

"That an attorney did not bring a competent knowledge to the discharge of his duty, unless he knew the effect of a fine in regard to the execution of a will.

"That the House will give security to property by affirming the decree, and it would tend to inform every one, that, if an attorney should, with a view to his own particular interest, be induced to do acts injurious to the property of others, he is not to derive advantage from them. (*Bulkley v. Wilford*, 2 Cl. & Finn. 102; *Seagrave v. Kirwan*, 1 Beatty, 157; *Barnesley v. Powell*, 1 Ves. 284.)

"A solicitor having purchased a property of his client, at an under-value, the client, eighteen years afterwards, brought his bill to set aside the sale. The court was of opinion, that a solicitor dealing with his client was bound to show, that he had given his client the price which he would have advised him to accept from another person; but the plaintiff having failed to show that he was not in a situation, during the time which had elapsed, to seek relief, the court dismissed the bill, but without costs. (*Champion v. Rigby*, 1 Tam. 421.)

"It may be inferred from this, that, had the plaintiff applied to the court in a reasonable time, or had the court been satisfied, by evidence, of his total inability to take proceedings in this court before, he would have had relief.

"A surgeon having brought an action against the executor of a deceased patient, to recover

the sum of 25,000*l.*, under an agreement, purporting to have been signed by the testator, to pay him that sum for medical and surgical assistance during the remainder of the testator's life, an injunction was granted to restrain the action; and, on the hearing of the cause, the Lord Chancellor, being satisfied from the internal evidence afforded by the document, and from other facts, as to which there was no dispute, that the testator never did agree or intend to direct what in that paper he is represented as agreeing to and directing, and that his signature to that paper, if he ever did sign it, must have been obtained by fraud, or under such circumstances as rendered it the duty of a court of equity to protect the party signing it, and his estate from being prejudiced by it, made the decree prayed by the bill, to have the alleged agreement delivered up to be cancelled with costs. (*Dent v. Bennett*, 4 Myl. & Cr. 269.)

"An attorney having received money for his client, and being owed on mortgage from another person the sum of 3000*l.*, wrote to his client that he had that mortgage in his hands; and having received the like amount for his client, he undertook, when thereunto required, to execute a transfer of the same:—The court held, that this was not mere proposal, and although there was no express acceptance, yet, there being no refusal of the security, the client was entitled to all such interest as the attorney had therein. (*Palmer v. Scott*, 1 Tam. 488.)

Mr. Tammyn has added to the present edition such of the New Orders of May, 1845, as relate to the examination of witnesses, and in particular to commissions for that purpose. He has also noticed, amongst others, the recent Act 8 & 9 Vict. c. 113, relating to official and documentary evidence.

## ADMISSION OF SOLICITORS IN CHANCERY.

### NOTICE.

*Secretary's Office, Rolls, April, 16, 1846.*

THE Master of the Rolls has appointed Wednesday, May 6th, at the Rolls Court, Chancery Lane, at a quarter past 3 in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his common law admission or his certificate of practice for the current year at the secretary's office, Rolls Yard, Chancery Lane, on or before Tuesday, May 5th.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st February, 1846.

### Courts of Equity.

[For the second series on the *Principles of*

Equity, see p. 532, *ante*; and second series of *Pleadings and Practice*, p. 552, *ante*.]

## IV. EVIDENCE.

### CERTIFICATE OF DISTRICT REGISTRATION.

A certificate of burial under the hand of a district registrar, duly certified, according to 6 & 7 W. 4, c. 86, is evidence of such burial. *Traill v. Kibblewhite*, 31 L. O. 390.

### COMMISSION TO EXAMINE WITNESSES.

1. When the cause was at issue, and subpoena to rejoin had been served before the Order of May, 1845, came into operation, the court will order a commission under the 94th of those Orders, and to be directed to two commissioners. *Bong v. Robinson*, 31 L. O. 157.

2. Upon what affidavits the Master may certify as to the propriety of granting a commission to examine witnesses abroad. *Bauer v. Mitford*, 2 Coll. 186.

Cases cited: *King of Spain v. Mendizabel*, 5 Sim. 596; *Coote v. Coote*, 1 Bro. C. C. 448; *Bamford v. Bamford*, 3 Hare, 643; *Mendizabel v. Machado*, 3 Russ. 540; *Mainertshagen v. Davies*, Coram. V. C. E.

### FOREIGN LAW.

The court will not receive passages cited from the acknowledged authorities for the law of a foreign country, upon a question arising in respect to that law, as evidence of what the foreign law upon that question is, unless the particular passages are deposed to by a witness skilled in the law of that country, as containing the law of that country upon the question in dispute. *Lord Nelson v. Lord Bridport*, 31 L. O. 57.

### PARTIES, EXAMINATION OF.

*Statute 6 & 7 Vict. c. 85*.—A defendant having been examined before the Master by her co-defendant, A. B., (saving just exceptions,) and her evidence not having been read, it was proposed to read it on behalf of the plaintiff. Held, that if this course were taken, the witness would be the plaintiff's witness, and that, inasmuch as the effect of the evidence was to charge A. B., and thereby to exonerate the witness, the evidence could not be received, the case not being within the statute 6 & 7 Vict. c. 85. *Carmichael v. Carmichael*, 2 Coll. 1. See *Seton*, 49; 3 *Swanst.* 627; *Lee v. Atkinson*, 2 Cox, 413; *Perigal v. Nicholson*, Wightm. 64.

### PRODUCTION OF BOOKS.

*Parish*.—On an information filed at the relation of certain parishioners against the churchwardens and overseers of the parish, praying the due administration of a charity, of which the churchwardens and overseers were trustees, the churchwardens' and overseers' books were ordered to be produced, although it was sworn by the defendants that they did not relate to the matters in question in the suit. *Attorney General v. Berry*, 2 Coll. 33.

## V. COSTS.

## ABATEMENT.

A suit abated by the death of a party cannot be revived for the recovery of costs alone, if they have not been taxed previous to the abatement. *Andrews v. Lockwood*, 31 L. O. 510.

## ADMINISTRATION SUIT.

Claim by a creditor, in an administration suit, to prove the penalty of a bond, as damages for the non-performance of a contract. The Master reported the claim. On exceptions, the court gave the creditor liberty to bring an action on the bond. The action was brought, and the jury found a verdict for the plaintiff (the creditor,) with but nominal damages. The Vice-Chancellor *Wigram*, upon this result, refused the creditor the costs of making the claim before the Master, and the costs of the action, but gave him the costs of the exceptions. *Morgan v. Elstob*, 4 Hare, 477. See *Hardy v. Martin*, 1 Cox, 26. *Forward v. Duffield*, 3 Atk. 555; *Calvert v. The London Dock Company*, 2 Keen, 645.

## APPEARANCE OF PARTIES BEFORE THE MASTER.

1. It is not an order of course to allow a party to attend the prosecution of a decree before the Master; but it will be made, if the party consent to take it at his own expense. *Attorney-General v. Drapers' Company*, 31 L. O. 367.

2. Appointees of a fund, not being parties to the suit, for administering the fund, are not entitled, adversely to the parties to the suit, to appear by counsel on the hearing of the cause for further directions, for the purpose of claiming their costs of proving their title in the Master's office; they ought, with a view to obtain such costs, to present a petition. *Grace v. Terrington*, 2 Coll. 53; S. C. 1 Coll. 3. See *Hutchinson v. Freeman*, 3 Myl. & Cr. 490; *Shuttleworth v. Howarth*, 4 Myl. & Cr. 492.

## CONTEMPT.

See p. 555, *ante*.

## COPYHOLDS.

See p. 524, *ante*.

## CREDITOR'S SUIT.

*Contribution.—Executors.*—Where the fund in a creditor's suit is insufficient to pay the plaintiff his costs, the creditors who have had the benefit of the suit by proving and obtaining payment of their debts must contribute to the plaintiff's costs, and it is not matter of exception to the rule that they obtained payment by reason of being associated as joint creditors with a person who had a right of retainer against the estate. *Thompson v. Cooper*, 2 Coll. 87; S. C. 1 Coll. 81.

Cases cited: *Shortley v. Selby*, 5 Madd. 447; *Lechmere v. Brasier*, 1 Russ. 72, 76; *Bluett v. Jessop*, Jac. 240, 243; *Spicer v. James*, 2 Myl. & K. 367.

And see *Administration Suit*.

## DISCOVERY.

*Perpetuating testimony.*—On a bill to perpetuate testimony, if no commission has been issued, the defendant is entitled to his costs of the discovery given, although he has examined witnesses in chief. The same rule is applied in this respect to a bill to perpetuate testimony, as to a bill for discovery only. *Skrine v. Powell*, 31 L. O. 175.

## DISMISSAL.

*Semble*, if a plaintiff who is served with a notice of dismissal of his bill for want of prosecution, obtains and serves an order to amend, (he being in time to obtain such an order,) and tenders a sufficient sum to pay the costs incurred in respect of the notice, he will not be liable to pay any further costs, if the motion is afterwards made. *Lester v. Archdall*, 31 L. O. 534.

And see sec. 9, p. 555, *ante*.

## EXECUTORS.

See *Creditor's Suit*.

## FORECLOSURE.

*Trustee.*—Mortgagor's trustee to bar dower not entitled as against the mortgagees to his costs of a suit brought to foreclose the mortgage. *Horrocks v. Ledcam*, 2 Coll. 208.

## INJUNCTION.

*Costs of issue.*—In an injunction cause, certain issues which had been directed on the motion for the injunction having been tried, and verdicts found for the plaintiff, he moved, before answer, for payment of the costs of the issues. The motion was refused, as being inconsistent with the practice of the court. *Makins v. Price*, 2 Coll. 190.

Cases cited: *Lambert v. Fisher*, 7 Sim. 525, 527; *Gomperts v. Ansdell*, 4 Myl. & Cr. 449; *Millington v. Fox*, 3 Myl. & Cr. 388; *Jones v. The Great Western Railway Company*, not reported; *Anonymous*, 2 P. W. 68.

## LEGACY.

See sec. 3, p. 527, *ante*.

## PERPETUATING TESTIMONY.

See *Discovery*.

## RECEIVER.

The rule which formerly prevailed against receivers originating proceeding is not now imperative; but they will not be allowed costs if any proceedings on their part lead to unnecessary expense. *Parker v. Dunn*, 31 L. O. 56.

## SECURITY FOR COSTS.

Where the plaintiff in a suit has no permanent residence, he may be called upon to give security for costs, although his address as stated in the bill was accurate at the time of the bill being filed. *Player v. Anderson*, 31 L. O. 463.

## SET-OFF.

Costs given to the plaintiff, notwithstanding the bill, raising a question on the construction of a will, was dismissed.

Costs given to the plaintiff out of the fund in question, directed to be set-off against pay-

ments out of such fund erroneously made by the trustees to the use of the plaintiff. *Cooper v. Pitcher*, 4 Hare, 485. See *Coppin v. Coppin*, 2 P. Wms., 293, 296; *Westcott v. Culliford*, 3 Hare, 274.

## TAXATION.

1. *Pressure.—Protest.*—A solicitor's bill of costs paid under pressure, and protested against, referred for taxation.

Protest, combined with other circumstances, may be a ground of reference of a bill of costs for taxation.

Where there is evidence of pressure, the court will, if necessary, direct a general reference for taxation, although in the petition for taxation, some only of the items of the bill of costs may be objected to. *Esparte Wilkinson*; *In re Alcock*, 2 Coll. 92.

Cases cited: *In re Lees*, 5 Bear. 410; *Horlock v. Smith*, 2 Myl. & Cr. 495; *In re Thompson*, 14 Law Jour. Ch. 137; *Ex parte Andrews*, 13 Law Jour. Ch. 222.

2. *12th Order of 1841.*—This order does not apply to the common order for enforcing payment of a bill of costs on taxation. *Re Blake*, 31 L. O. 463.

3. *Payment.*—6 & 7 Vict. c. 73. s. 38.—A person who applies for the taxation of a bill under this clause after payment, must be able to show that there were circumstances connected with the payment, which would justify the person who paid it in applying to have it taxed. It is not sufficient to show that the bill is in its nature objectionable. *Re Evans*, 31 L. O. 156.

## TRUSTEES.

Where one of three trustees appears separately from his co-trustees, he may be entitled to his costs, if there are circumstances to justify such separate appearance. *Wiles v. Cooper*, 31 L. O. 292.

And see *Foreclosure*; and p. 531, *ante*.

## VENDOR AND PURCHASER.

See sec. 1, p. 531, *ante*.

This closes the digest for the present volume. The names of cases digested will be found at p. 593, *post*; and the "Table of Titles," (which will render the whole easily accessible,) will be given in the next number, with the title page and contents of the volume.

The next part of the digest will be continued early in May, and each volume will comprise two parts or series, arranged, as already indicated, under the heads of Common Law; Equity and Bankruptcy; Criminal Law; Ecclesiastical; and Admiralty; House of Lords and Privy Council. Each department, where capable of such subdivision, will be arranged in appropriate sections, viz.:—1. Construction of Statutes. 2. Principles. 3. Pleading. 4. Practice. 5. Evidence. 6. Costs, &c.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

## ADMINISTRATION SUIT.—EXAMINATION OF EXECUTOR.

*If, in answer to a claim made in an administration suit, by a cestui que trust, the executor pleads payment, the cestui que trust cannot examine the executor upon interrogatories to prove notice of the trust.*

THIS was a motion for leave to examine an executor on interrogatories before the Master, under these circumstances. The testator, upon the marriage of his daughter Esther Holder, had settled a bond for 2,000*l.* upon her to her separate use and her children. Subsequently, the testator had got possession of the bond, and gave it up to Holder, his daughter's husband, who made an assignment of it for the benefit of his creditors, under which Bryant, the testator's executor, paid 850*l.* Subsequently, a suit was instituted for the administration of the testator's estate, and in that suit the *cestui que trusts* of the bond carried in a charge as creditors of the testator. In answer to this charge Bryant stated the payment made by him in respect of the bond. The *cestui que trusts*, in reply, alleged, that at the time of making that payment Bryant had notice of the trust, and therefore, that it ought not to be allowed him. Bryant denied that he had any notice, and the object of the present application was to examine him as to the circumstances under which he made the payment in order to affect him with the notice of the trust.

Mr. Stinton, for the motion, cited *Simons v. Buckeridge*, 13 Ves. 252; *Franklin v. Colquhoun*, 16 Ves. 218; *Parcell v. Macnamara*, 17 Ves. 434.

Mr. Bagshawe and Mr. Toller, *contra*.

Lord Langdale, after stating the facts, observed that the object sought was really to show that Bryant had been guilty of a breach of trust. But you could not have a decree for a breach of trust in a mere administration suit. Special matters might indeed sometimes be investigated in the Master's office; but such a claim as this could not be settled without a bill to effect its object. The motion must be refused.

*Ford v. Bryant*. March 26, 1846.

## Vice-Chancellor of England.

## PUBLICATION.—ERROR.

*The court will not enlarge publication, because the solicitor having supposed that the new orders allowed two calendar months within which application might be made to the master to enlarge had neglected to apply to him.*

THIS was a motion to enlarge publication,

upon the ground that the solicitor had supposed the two months given by the new orders, within which applications to enlarge must be made to the Master, to be calendar months, and not lunar; and therefore did not take out a warrant to apply to the Master till too late.

Mr. Wilcocks, for the motion, said that he did not seek to delay the cause, and read affidavits to show that a good deal of time and trouble had been employed in collecting evidence.

Mr. Stuart and Mr. Southgate were contra. But his Honour, without hearing them, said he thought the motion absolutely without foundation, and it must be dismissed with costs.

*Stephen v. Dingwall.* March 12, 1846,

### Queen's Bench.

(Before the Four Judges.)

#### PRACTICE.—CERTIORARI.

*Where the sessions have reserved a case for the opinion of this court and the case comes on for argument in the Crown Paper, and the order of sessions and the original order are brought up by certiorari in the ordinary manner, this court will only consider the questions reserved by the case for its opinion; and it is incompetent for the party impeaching the decision of the sessions to take any other objections to the orders, unless the objections have been stated to the court at the time the certiorari was moved for, and the court has assented to such objections being taken.*

ON the 30th of November, 1843, an order was made by two justices of the county of Radnor, adjudging the settlement of one J. P. Wood, an insane pauper, to be in the parish of Heyop, in the said county, and ordering the overseers to make certain weekly payments to the keeper of an asylum for insane persons at Shrewsbury. There was an appeal against this order, which was confirmed, subject to a case. The ground of appeal on which the judgment of the court of quarter sessions proceeded was, "that the said order, and the said order therein recited, were not respectively made by two justices of the peace acting in and for the county in which such asylum or licensed house is situate." The question reserved for the opinion of the court was, whether the order appealed from is bad, informal, and insufficient for all or any of the grounds stated in the notice of appeal. If it be so, the order to be quashed for form. The rule, of which a copy was duly served on the justices, was drawn up, "calling on the prosecutors to show cause why an order, under the hands and seals of E. R., Esquire, and the Rev. J. R. B., clerk, dated the 30th of November, 1843; and also an order of sessions, made in confirmation thereof, should not be severally quashed for the insufficiency thereof."

When the case came on for argument, Mr. E. V. Williams proposed, on behalf of the appellants, to rely on objections to the original

order of justices, which had been returned into this court, as well as those which referred to the orders mentioned in the rule.

Mr. Greaves contended that these objections could not now be taken. This case was removed by certiorari, and was set down for argument in the Crown Paper last Michaelmas Term. The general rule is, that no certiorari shall issue, either in term or vacation, unless upon an application made to the court or a judge, and the grounds for the certiorari being stated openly to the court in term, or the judge in vacation; and this rule formerly applied as well where a case had been reserved by the sessions as otherwise; and the uniform practice was to mention the grounds for quashing such an order on a case reserved, on moving for the rule to quash. *Res v. New Windsor*.<sup>a</sup> *Res v. Bramshaw*.<sup>b</sup> *Res v. St. Helen's Abingdon*.<sup>c</sup> But the practice was afterwards altered, where the sessions had reserved a case, by a rule made in Lord Mansfield's time, that "all rules to show cause why orders should not be quashed should be peremptory rules, and the causes be set down in the Crown Paper."<sup>d</sup> This rule was made upon the ground that where a case was reserved for the opinion of this court there was a question fit to be discussed. But that rule only applied where a case had been reserved. Where no case was reserved, and it was desired to object either to the original order or to the order of sessions, the invariable course was to apply by motion in term time, and in vacation to a judge for the certiorari, and then to state objections to the order. *Res v. Moorcock*.<sup>e</sup> *A. Res v. Guildford*.<sup>f</sup> *Regina v. Coscases* for argument, this court requires that in tornies on both sides shall be Crown Paper, the at- to the judges two days before the paper books the case will be put down for argument, which together with the points intended to be argued, and it makes an express exception in those cases where a special case is reserved.

Mr. E. V. Williams and Mr. Pashley, contra. The original order and the order of sessions are now on the files of this court, having been brought there by writ of certiorari, and there is no reason why the court should not notice defects that appear in either one or the other of them. If the certiorari ought not to have issued, it was competent to have quashed it by a motion for that purpose, which has not been made. In *Regina v. Darton*,<sup>g</sup> the same course seems to have been pursued. It is true that parties cannot travel out of the points reserved by the sessions into others which might have been brought before them, as this court will not act as a court of appeal; that was the ground of the decision in *Regina v. Costock*,<sup>h</sup> but the rule is different with reference to objections which go to jurisdiction. It was conceded, in

<sup>a</sup> Burr. S. C. 19.

<sup>b</sup> Id. 98.

<sup>c</sup> Id. 293.

<sup>d</sup> 2 Nolan. 598.

<sup>e</sup> 2 East 66.

<sup>f</sup> 2 Chitty R. 284.

<sup>g</sup> 10 Adol. & Ellis, 417.

<sup>h</sup> 12 Ad. & Ell. 78.

<sup>i</sup> 10 Adol. & Ellis, 417.



*Res v. Withernwick*,<sup>1</sup> that the court might notice such apparent defects; and in *Regina v. Martin*,<sup>1</sup> it was held that every step must show jurisdiction.

Mr. Justice *Patteson*. I think the practice is established by the cases cited by Mr. Greaves, namely, that an objection arising on the face of the order cannot be taken when a case has been reserved by the sessions which does not raise it, unless the rule for a certiorari has been moved for in open court, and the additional reason stated why the order should be quashed. Indeed it is very convenient it should be so, as, when a case is granted by sessions, the certiorari goes, as a matter of course, without observation; and were it otherwise, parties might come prepared to meet one point, and then have a new one raised, which would be very inconvenient. Nor does this rule prejudice the other side, because they can make their application for a certiorari upon the points not reserved; and, for aught I know, even if the case were disposed of, they might still come to us for a certiorari to bring up the original order on this fresh objection. But whenever the sessions grant a case and a certiorari issues, we will not entertain any objection not raised by the case, unless it has been mentioned to the court on moving for the certiorari.

Mr. Justice *Williams* concurred.

Mr. Justice *Coleridge*. I am of the same opinion as to the practice on the authority of the cases cited. It is a fallacy to say that this court cannot confirm what appears to have been done without jurisdiction. That this court ought no eyes to see what is not nowhere better before it is a principle of than in settlement established and that a case from the sessions cases. It is a fatal defect on the face of it, but may if the quarter sessions pass it over, we are content to shut our eyes to it, and to decide the question asked us. As, for example, in the case of a settlement by renting a tenement which might disclose some fatal defects overlooked by the sessions, if they have reserved the case on a point which is perhaps invulnerable, we should confirm their order on that, and not look into the others.

*The Queen v. The Inhabitants of Heyop*. Sitings in Banc after Hilary Term.

#### Queen's Bench Practice Court.

#### EJECTMENT. — AFFIDAVIT OF SERVICE OF DECLARATION, &c.

*An affidavit of service in ejectment stating, that the declaration and notice were explained to the tenant in possession, but omitting to state that they were read over to him, is sufficient for judgment absolute against the casual ejector.*

*Weightman* moved for judgment absolute against the casual ejector. The affidavit of

service stated, that the declaration and notice were explained to the tenant in possession, but not that they were read over to him. It was submitted, however, upon the authority of *Doe v. Roe*, 1 Dowl. 425, that this was sufficient.

*Coleridge*, J., thought that the affidavit was sufficient, and there was a

Rule accordingly.

*Doe d. Weightman v. Roe*. Easter Term, 1846.

#### Exchequer.

#### RELEASE.—PLEA PUIS DARRIN CONTINUANCE.—RAILWAY COMMITTEE.

*In an action by the provisional committee of a projected railway against the engineer of the company, for a breach of contract, two of the plaintiffs executed a release, which the defendant pleaded puis darren continuance. The court refused to set aside the plea, it appearing that one of the releasers had a substantial interest in the company, and was not a mere trustee.*

*Crompton* moved for a rule, calling on the defendant to show cause why a plea of release should not be set aside. The action was brought by the provisional committee of "The Liverpool, Preston, & North Union Railway Company," against the engineers of the company, for a breach of contract in not completing certain sections and plans in sufficient time to enable the company to deposit them at the office of the Board of Trade on the 30th Nov. last. The writ was sued out in the month of January, and issue having been joined, the cause was set down for trial at the Liverpool Assizes on the 21st March. On the 20th, the defendants pleaded *puis darren* continuance. A release executed by J. Duncan and C. Randall, two of the plaintiffs. It was submitted, that the release was executed through collusion with the defendants, and in fraud of the other plaintiffs, and in support of that view, affidavits were produced, which disclosed the following facts:—That a meeting of the shareholders took place on the 21st January, when it was resolved, that proceedings should be instituted against the defendants, and that resolution was communicated to the original shareholders, and also to the releasers: it was further resolved, that all shareholders who were desirous of giving up their shares should receive one guinea on account of the deposit on each share. Two hundred shares had been allotted to J. Duncan, and of these he returned 150. Soon after the present action was commenced, Duncan and three others of the provisional committee filed a bill in Chancery against the other committee-men, in order to have the accounts of the company taken under the authority of that court, and to restrain the present action. The other releaser, Randall, had been appointed one of the executive committee, but had never taken any active part in the management of the company. He had received a guinea per share on all the shares

<sup>1</sup> 6 Ad. & Ellis, 273. <sup>2</sup> 2 Q. B. R. 1037, n.

allotted to him, and had executed a deed releasing the provisional committee from all claims at law and in equity, in respect of the projected undertaking, but subject to a rateable participation in any surplus fund. Under these circumstances, it was contended that there was clear evidence of fraud, inasmuch as Randall had parted with all his interest, and Duncan merely retained a few shares, in order that he might be enabled to defeat the present action. If this plea were allowed, any one member of a provisional committee would have all the shareholders in his power, and might at any time extinguish their rights. *Phillips v. Claggett*, 11 M. & W. 84, was referred to.

*Pollock, C. B.* There ought to be no rule. Though one of the releasors has parted with his interest, yet the other has a sufficient interest to entitle him to release. It may be a very wrong thing to do, and one for which the party would be responsible in another tribunal, but if there is the smallest scintilla of right or real interest on which the release may operate in law, we cannot interfere. Where complicated interests are involved, we have no machinery to work out the equities of the case, it is better, therefore, to adhere to the law.

*Parks, B.* The question comes to this, are the parties who execute the release devoid of all interest, in fact mere names? If it were so, there would be a case of fraud to justify us in interfering; not indeed to set aside the release—for that we have no power to do,—but to prevent it being pleaded to the prejudice of the other plaintiffs. It appears that Duncan is not a mere trustee, but is substantially interested in the undertaking, for he holds fifty shares, and may therefore execute a valid release, subject to responsibility to his co-partners. In order to induce a court of law to set aside a plea of this nature, it is necessary to make out a clear case of fraud; that has not been done, and the remedy is by bill in equity against Duncan.

*Rolfe and Platt, B.'s*, concurred.

Rule refused.

*Rawstorne v. Gandell.* Easter Term, April 15, 1846.

#### RAILWAY DEPOSIT.

*Wallstabb v. Spottiswoode.* In this case, which was an action to recover the deposit paid for railway shares, the court, (*Pollock, C. B., Alderson, B., Rolfe, B.*), granted a rule nisi to enter a nonsuit. Mr. Baron *Alderson* expressed a strong opinion that the action would not lie, since the company could not issue shares unless registered, and they could not legally register until the shareholders had executed the deed, upon which they would become partners.

22nd April, 1846.

#### Court of Bankruptcy.

##### ATTESTATION OF INSOLVENT'S PETITION.

Semble, that the person attesting the signature of an insolvent to a petition under the stat. 7 & 8 Vict. c. 96, need not be an attorney or solicitor of the court of bankruptcy.

*Edmund Frederick Bell*, described in his

petition as of Fletton, in the county of Huntingdon, clerk in the service of the London and Birmingham Railway Company, came before Mr. Commissioner *Fane*, upon a petition for protection from process, filed under the stat. 7 & 8 Vict. c. 96, sec. 2.

The petition was in the form prescribed by the act of parliament, (schedule A. No. 1.) save that the blanks in the attestation were filled up by the words in italics, and ran thus:—"Signed by the said petitioner on the 16th day of March, 1846, in the presence of *Thomas Cormack, of No. 20, Austin Friars, in the city of London, clerk to Ebenezer Benham of the same place, attorney or agent in the matter of the said petition.*"

The attention of the commissioner was called by a creditor of the petitioner to the fact, that the petition was witnessed by an attorney's clerk, and not by an attorney, and it was insisted that this was a sufficient ground for dismissing the petition.

On the other hand, the commissioner was referred to the sixth sect. of the Small Debts Act, (8 & 9 Vict. c. 127,) and it was contended, that under this section the party witnessing the petition was not required to be an attorney or solicitor. The words of the 6th sect. are:—"That in making application to any commissioner or court as aforesaid, or taking any proceedings under this act, or under the act of the last session of parliament intitled, *An Act to amend the Law of Insolvency, Bankruptcy and Execution*, or under an act made in the 6th year of the reign of her Majesty, intitled, *An Act for the Relief of Insolvent Debtors*, it shall not be requisite for any party, whether creditor or debtor, to employ either counsel or attorney or solicitor." It was also stated, on behalf of the insolvent, that the objection now made, had been already taken before Mr. Commissioner *Shepherd*, in a case, *Ex parte Reid*, and overruled by that learned commissioner, with the concurrence, and after a conference with, one of his brother commissioners.

Mr. Commissioner *Fane* thought, that if the petitions were to be witnessed at all, it ought to be by an attorney or solicitor of the court. The object of the attestation was to identify the petitioner, and afford security that he knew the nature of the proceeding he was adopting when he petitioned the court. If the petition might be witnessed by a person who was not an attorney of the court, it might be witnessed by any person in the street, and the attestation afforded no security whatever. He confessed, therefore, he felt great reluctance in coming to the conclusion that the signature of an attorney might be dispensed with. Still, as the point had been decided by one of his brother commissioners, he should name a day for the final order of the petitioner, but wished it to be understood that he had not finally decided the question, whether the petition must be witnessed by an attorney. He proposed to take the opinion of his brother commissioners on the point.

*In re Edmund Frederick Bell.* 17th April, 1846.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From March 24, to April 17th 1846, both inclusive, with dates when gazetted.*

Green, Octavus, Cambridge. April 7.

Smith, Montague George, Hemel Hempstead. April 10.

Steward, Charles, Ipswich. April 3.

Tweed, John Thomas, Lincoln. April 3.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From March 24, to April 17th, 1846, both inclusive, with dates when gazetted.*

Bayley, William, and William Crawford, Newby, Stockton, Attorneys and Solicitors. April 14.

Birkett, James, and Robert Foster, Liverpool, Attorneys and Solicitors. March 31.

Burrell, Peter Ashwell, and Edward Peterson, 1, White Hart Court, Lombard Street, Attorneys and Solicitors. March 31.

Dodd, Grantham Robert, and William Shaw Smith, Reading, Attorneys and Solicitors. April 3.

Evans, John, and William Barnes, 6, South Square, Gray's Inn, Attorneys, Solicitors, and Irish Agents. April 10.

Foot, Samuel, and Charles Henry Redcliffe, Salisbury, Attorneys and Solicitors. April 10.

Hartley, George, and Joseph Heath, Settle, Attorneys, Solicitors, Conveyancers, Stewards of Manors, Agents, Receivers of Rents, Clerks to Justices, Clerks to Commissioners of Taxes, and of Turnpike Roads. April 10.

Maugham, Robert, and Thomas Kennedy, Attorneys and Solicitors. April 17.

Walkden, George, and Thomas Walkden, Mansfield, Solicitors and Attorneys. April 14.

Walter, William, and Stephen Demeinbury, Kingston-upon-Thames, Attorneys and Solicitors. April 10.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### NEW BILLS.

Real Property Conveyance.—For 2nd reading. Lord Brougham.

Abolition of Deodands.—For 2nd reading. Lord Campbell.

Compensation for Accidental Deaths.—For 2nd reading. Lord Campbell.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—Waiting for Report of Committee. See the bill, p. 354, *ante*. Lord Dacre.

Duties of Constables, &c.—In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief.—For 2nd reading. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor. See the bill, p. 452, *ante*.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, p. 472, *ante*. Lord Denman.

Real Property Burdens.—In Select Committee.

Metropolitan Buildings.—For 2nd reading. See the bill, p. 426, *ante*.

### House of Commons.

#### NEW BILLS.

Administration of Criminal Justice.—In committee.

Insolvent Debtors, (India). In committee.

Bankruptcy and Insolvency.—For 2nd reading. See the bill, p. 569, *ante*. Mr. Hawes.

Parliamentary Elections and Freemen—negotiated on 2nd reading. Sir De Lacy Evans.

Roman Catholics' Relief.—In Committee. See the bill, p. 402, *ante*. Mr. Watson.

Small Debt Courts:

Salford,  
Somerset,  
Northampton,  
Birkenhead,  
St. Austell. For 2nd reading.

Friendly Societies.—Consideration of report. Mr. T. S. Duncombe.

Poor Removal.—For 2nd reading. Sir J. Graham. See analysis of the bill, p. 473, *ante*.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackinnon.

Railway Deposits.—*Passed*.

Commons Inclosure.—For 3rd reading. Sir J. Graham.

## THE EDITOR'S LETTER BOX.

THE letter of "Z." on provincial law lectures shall receive early attention.

The suggested question by "Sub Articulis" regarding the doubtful utility of "cramming" for the examination is worthy of consideration.

The recommendation of a correspondent at Bath "to abolish the law of settlement," can scarcely be acceptable either to rate-payers or professional men engaged in carrying the law into effect; but our correspondent's letter shall be inserted.

The Table of Contents and other references necessary to complete the present volume, will accompany the next number; and enable our readers to bind up the work.

It will be observed that the Analytical Digest has considerably enlarged the bulk of the half-yearly volume. It is gratifying to learn that this last important addition (without any increased subscription) has met with unanimous approval. In our next volume, by confining the cases cited to such as are mentioned in the judgments, we shall save considerable space, and be enabled to carry out more completely our other improvements.

# NAMES OF ORIGINAL CASES REPORTED IN THIS VOLUME;

## AND OF CASES CITED IN

"NOTES ON EQUITY," "THE PROPERTY LAWYER," AND "POINTS IN  
COMMON LAW;" &c.

Abbott v. Richards, 345  
Abram v. Ward, 221  
Anderson v. Stather, 137, 488, 489  
Andrews v. Lockwood, 510  
Anon, *ex parte*, 136  
— 248  
— 248  
— 490  
Armitage v. Grafton, 392  
Attorney-General, v. Drapers' Company, 367  
— v. Leicester Corporation, 25  
— v. Richards, 238

Baker v. Jupp, 418  
Barber, *in re*, 97  
Basset v. Pearce, 34  
Beaumont v. Reeve, 368  
Bell, *in re*, 579  
Biddulph v. Darrell, 348  
Bird v. Bird, 438  
— v. Jones, 470  
Blackpool Railway Company, *ex parte*, 15  
Blake, *in re*, 463  
Blenkinsop v. Blenkinsop, 318  
Boag v. Robinson, 137  
Bradstock v. Whitley, 438  
Braithwaite v. Gardner, 439  
Bulwinkle v. Young, 368  
Burt v. Lees, 398

Carpmael v. Powis, 509  
Carpue v. Brighton Railway, 167  
Chambers v. Whiteside, 158  
Champion v. Griffiths, 330  
Chapman v. Becke, 114  
Chappell v. Purday, 104  
Cholmeley v. Darby, 399  
Christ's Hospital v. Grainger, 317  
Clark v. Dunn, 222  
Clarke v. Smith, 147  
Clemmett v. Bradbui, 512  
Cobbold and others v. Adams and others, 59  
Cole v. Gain, 33  
Cotton, *in re*, 268  
Courage v. Wardell, 271  
Critchley, *ex parte*, 489  
Crosbie v. Holmes, 343  
Cunliffe, *ex parte*, 58

Dailey v. Ede, 442  
Dalrymple v. Dawes and another, 392  
Dalton v. Hayter, 112  
Dame v. Cole, 136

Daniel v. Hill, 318, 341  
Davis, J. P., *in re*, 490  
— v. Clarke, 545  
— v. Price, 290  
Doe d. Kell v. Brown, 273  
— King v. Roe, 392  
— Mayor, &c. of London v. Roe, 273  
— Musket v. Roe, 16  
— Patteson v. Roe, 79  
— Weightman v. Roe, 578  
Dove, *in re*, 419  
Dray v. Bird, 370

Edwards v. Bourne, 448  
Elliott v. Morris, 199  
Evans, *in re*, 156  
Ewart v. Jones, 115  
Fairthorne, *in re*, 465  
Fearn, *in re*, 466, 542  
Feltham v. Clark, 157  
Fenton v. Clayton, 271  
Ford v. Dornford, 464  
— v. Bryant, 576  
Fordyce v. Brydges, 94  
Foster v. Bank of England, 559  
Franklin v. Hodgkinson, 440

Gaskell v. Sefton, 177  
Gibb v. Ralph, 249  
Gibson v. Hewett, 270  
Gilechrist v. Gilechrist, 113  
Goodman v. Gonnell, 510  
Gordon v. Howden, 376  
Grant v. Madox, 560  
Greave v. Gorton, 373  
Greville, Esq. v. Sparding, 96  
Griffiths v. Thomas, 59

Hall v. Bell, 73  
Hallett v. Crosswell, 369  
Harmer v. Johnson, 138  
Harrison v. Greenwood, 249  
Harris, *ex parte*, 223  
Heap v. Thorp and others, 113  
Hemming v. Dingwall, 176  
Henson v. Blackwell, 494  
Hertford, Marquis of, v. Suisse, 57  
Heyleham v. Young, 222  
Higgins v. Ede, 442  
Hinton v. Acraman, 542  
Hoare v. Greville, 271  
Hodkins v. Cook, 209  
Holt v. Dewell, 518

Hoole v. Roberts, 248  
 Hope, *in re*, 59  
 Horry v. Calder, 221  
 Hoyles v. Blore, 499, 512  
 Hume v. Lord Wellesley, 391  
 Hunter v. Daniel, 422  
 Hutchinson, *in re*, 296

Ilderton v. Sill, 79  
 Inman v. Holden, 157

Jeffreys v. Evans, 36, 424  
 Jones v. Parker, 176  
 Jope v. Pearce, 368  
 Jubb v. Ellis, 222

Kay v. Wall, 33  
 King, *in re*, 90  
 — v. Simmonds, 46

Lester v. Archdall, 416, 534  
 Levi v. Perrott, 535  
 Lewis v. Lord Kensington, 561  
 — v. Edwards, 292  
 Litchfield, Mayor of, v. Simpson, 58  
 Llewellyn v. Llewellyn, 159  
 Lovell v. Blew, 156  
 Lucas v. Jones, 327  
 Lunn v. Thornton, 208  
 Lyddon v. Woolcock, 113  
 Lynes, *ex parte*, 418

Mabey v. Mansfield, 35  
 Magnay v. Burt, 25  
 Markath v. Williams, 318  
 Martin v. Dore, 391  
 Mathewston v. Balstow, 114  
 Maxeman v. Davis, 294, 374  
 Miles Myers, *in re*, 342  
 Miller, *ex parte*, 90  
 Murray v. Silver, 36

Neal v. Snoultan, 137  
 Nelson, Lord, v. Lord Bridport, 57  
 Newton v. Overseers of Mobberley, 115  
 Nicholson v. Jackson, 36

O'Grady v. Walgram, 416  
 O'Neill v. Lucas, 76

Palmer v. Earith, 47  
 Parker v. Dunn, 66  
 — v. Great Western Railway, 61  
 — v. Parker, 342  
 — v. Sturgis, 558  
 Parnell v. Smith, 272  
 Parry v. Nicholson, 143  
 Peart v. Hughes, 137  
 Pinnock v. Kernel, 135  
 Player v. Anderson, 463  
 Ponder v. Abrahams, 51  
 Pook v. Raphael, 96  
 Pott v. Beavan, 424  
 — v. Todhunter, 543  
 Potts v. Dutton, 94, 135  
 Prentice v. Phillips, 391  
 Preston v. Dickensan, 94  
 Proudfoot v. Boyle, 393  
 Pyke, *ex parte*, 91

Queen v. Blythwaith, 560  
 — v. Edward Cole, 95  
 — v. Sir R. Dobson, 200  
 — v. Downhoiland, Inhabitants of, 293

Queen v. Gregory, 417  
 — v. Heyop, Inhabitants of, 577  
 — v. London, Mayor of, 11  
 — v. Middlesex, Sheriff of, 466  
 — v. Montgomeryshire, Justices of, 16  
 — v. Surrey, Justices of, 534

Raine v. Cairns, 333  
 Rawstorne v. Gandell, 578  
 Reeve v. Rye, 489  
 Rennie v. Beresford, 370  
 Reynolds v. Parker, 514  
 Richards v. Symonds, 77  
 Rigby v. Pinnock, 415  
 Robinson, *in re*, 442, 514

Scott v. Weston, 16  
 Scrine v. Powell, 175  
 Shadbolt v. Woodfall, 518  
 Shedd v. Birkett, 77  
 Sheffield Railway, *in re*, 510  
 Shetler, *in re*, 274  
 Short v. Stowe, 319  
 Shuffard v. Brown, 78  
 Slack v. Clifton, 417  
 Slaney v. Sidney, 202  
 Smart v. Nokes, 126  
 Smith, *in re*, 513  
 Stephen v. Dingwell, 576  
 Stiles v. Meek, 80  
 Stokes v. Heron, 329  
 Stretton, *in re*, 160  
 Surplice v. Farnworth, 451  
 Symes v. Prosser, 490

Tapfield v. Hillman, 207  
 Taylor v. Tennant, 272  
 — *ex parte*, 536  
 Thompson v. Spiers, 278  
 — v. Deminy, 544  
 Thorpe v. Harvey, 156  
 Toulmin v. Elgie, 465  
 Townsend v. Smith, 201  
 Traill v. Kibblewhita, 390  
 Tuck v. Raymond, 175

Walford v. Fleetwood, 26  
 Wall v. Walton, 126  
 Wallstab v. Spottiswoods, 579  
 Walton v. Land, 78  
 Warner v. Platell, 76  
 Watson v. Bodell, 235  
 Webb v. Hensel, 158  
 Webster v. Barnes, 249  
 Whalley, *in re*, 17  
 Whitmore v. Sloan, 199  
 Whitworth v. Whitworth, 200  
 Wiles v. Cooper, 292  
 Wilkins v. Bromhead, 188  
 Williams v. Welch, 390  
 — v. Welsh and others, 176  
 — v. Williams, 111  
 Wing v. Wing, 290  
 Winnach v. Denley, 321  
 Winnall v. Featherstonhaugh, 193, 462  
 Wood v. Leadbitter, 9  
 Wooll v. Townley, 247  
 Wright v. Maddocks, 158

York v. White, 463  
 Young v. Hopley, 415  
 — v. Quinsey, 218  
 — v. Smith, 293, 351

# INDEX TO THE CASES

IN THE

## ANALYTICAL DIGEST.

	PAGE.
Abram v. Ward, 31 L. O. 221 ..	553
Alcock in re, ex parte Wilkinson, 2 Coll. 98 ..	576
Allee, app., House, resp. 8 Scott, R. N. 987 ..	340
Ames v. Parkinson, 7 Beav. 379 ..	218
Anderson v. Stather, 2 Coll. 289; 31 L. O. 157, 448 ..	553, 554, 556
Andrews, v. Leekwood, 31 L. O. 510 ..	575
Anon, 2 D. & L. 1001 ..	412
— 31 L. O. 248 ..	557, 558
Appelmans v. Blanche, 14 M. & W. 154 ..	385
Apperton, wife of, in re, 1 C. B. 447 ..	412
Appleyard v. Todd, 6 Man. & G. 1019 ..	413
Ashton v. Brevitt, 14 M. & W. 106; 2 D. & L. 908 ..	384, 390
Attorney-General v. Berry, 2 Coll. 33 ..	574
— v. Drapers' Co. 31 L. O. 367 ..	575
— v. Malloy, 7 Beav. 351 ..	210
— of Jersey v. Capelain, 4 Moore, 37 ..	290
Author v. Author, 13 Sim. 422, 439 ..	212
Baddeley v. Curwen, 2 Coll. 151 ..	553
Bago, app. Perkins, resp. 8 Scott N. R. 983 ..	340
Bailey v. Porter, 14 M. & W. 44 ..	359
Barns v. Price, 1 C. B. 214 ..	388
Baronwall v. Williams, 7 Man. & G. 403 ..	386
Bartlett v. Dimond, 14 M. & W. 49 ..	364
Barwell v. Brooks, 7 Beav. 345 ..	247
Bauer v. Mitford, 2 Coll. 188 ..	574
Baxter, app. Newman, resp. 8 Scott, N. R. 1019 ..	341
— v. Nurse, 6 M. & Gr. 935 ..	363
Beaurup v. Peacock, 14 M. & W. 149 ..	436
Belcher v. Vardon, 2 Coll. 162 ..	531
— v. Whitmore, 7 Beav. 245 ..	246
Bell v. Dunmore, 7 Beav. 283 ..	242
Benazech v. Bennett, 1 C. B. 313 ..	436
Bengal, Bank of v. Radakissen Mitter, 4 Moore, 340 ..	290
Bentley v. Goldthorp, 1 C. B. 368 ..	388
— v. Keighley, 6 M. & G. 1039 ..	388
Biddulph v. Darrell, 31 L. O. 342 ..	558
Biggs v. Penn, 4 Hare, 471 ..	553
Bittleston v. Timmis, 1 C. B. 389 ..	365
Blackpool Railway Company, ex parte, 31 L. O. 15 ..	557
Blake, in re, 31 L. O. 463 ..	576
Blenkinsop v. Blenkinsop, 31 L. O. 318 ..	558
Bong v. Robinson, 31 L. O. 157 ..	574
Bond v. Roberts, 13 Sim. 400 ..	245
Boodle v. Campbell, 7 M. & G. 386 ..	387
Boyd v. Lett, 1 C. B. 322 ..	384
Bradstock v. Whitley, 7 Beav. 346 ..	244
Brandt v. Eppe, 4 Hare, 343 ..	555
Brockbank v. Anderson, 7 M. & G. 295 ..	366

	PAGE.
Bromley, in re, ex parte Wilkinson, 13 Sim. 475 ..	314
Buckland v. Pocknell, 13 Sim. 406 ..	280
Bulleck, in the goods of, 1 Rob. 275 ..	285
Belwinkle v. Young, 31 L. O. 368 ..	556
Burch v. Leake, 7 M. & G. 377 ..	386
Burgoyne v. Showler, 1 Rob. 5 ..	287
Burrell v. Lord Egrement, 7 Beav. 205 ..	216
Bute v. Lawrence, 7 M. & G. 405 ..	415
Butler v. Powis, 2 Coll. 156 ..	529
Butta, in re, 4 Moore, 92 ..	290
Caldar and Hebble Navigation Company v. Pilling, 12 M. & W. 76 ..	333
Camac v. Warriner, 1 C. B. 356 ..	410
Cameron v. representatives of Fraser, 4 Moore, 1 ..	291
Carmichael v. Carmichael, 2 Coll. 1 ..	574
Carpus v. London and Brighton Railway Company, 5 Q. B. 747 ..	339
Cass v. Cass, 4 Hare, 278 ..	247
Castle v. Eats, 7 Beav. 296 ..	221
Catterall v. Sweetman, 1 Rob. 304 ..	286
Chadwick v. Heatley, 2 Coll. 157 ..	530
Chambers v. Whiteside, 31 L. O. 158 ..	556
Chanter, in the goods of, 1 Rob. 273 ..	285
Chapman, in the goods of, 1 Rob. 1 ..	287
Christian v. Chambers, 4 Hare, 307 ..	219
Christ's Hospital v. Grainger, 31 L. O. 317 ..	554
Clapperton v. Monteith, 6 M. & G. 909 ..	334
Clark v. Burgh, 2 Coll. 221 ..	525
— v. Butler, 13 Sim. 401 ..	220
— v. Smith, 6 M. & G. 1051 ..	437
Clifton v. Peabody, 7 M. & G. 399 ..	411
Cocksedge v. Cocksedge, 1 Rob. 90 ..	286
Cole v. Green, 6 M. & G. 872 ..	336
Compton v. Bloxham, 2 Coll. 201 ..	533
Cookson v. Cookson, 12 Clark & F. 121 ..	289
Coomber v. Howard, 1 C. B. 440 ..	363
Cooper, app. Harris, resp. 8 Scott, N. R. 947 ..	340
— v. Pitcher, 4 Hare, 485 ..	576
— v. Taylor 5 M. & G. 989 ..	361
Copley v. Medeiros, 7 M. & G. 426 ..	433
Cotesworth v. Stephens, 4 Hare, 185 ..	213
Cotton, in re, 31 L. O. 268 ..	555
Courage v. Wardell, 4 Hare, 481; 31 L. O. 271 ..	157, 557
Courtney v. Taylor, 6 M. & G. 851 ..	385
Cow v. Kinneraley, 6 M. & G. 981 ..	409
Crollin v. Brooke, 14 M. & W. 11 ..	358
— v. Calvert, 14 M. & W. 11 ..	387
Cresy v. Bevan, 13 Sim. 354 ..	243
Crocker, app. Overseers of Lambeth, resp. 8 Scott, N. R. 985 ..	340
Crofts v. Brown, 2 D. & L. 935 ..	412
Curling v. Robertson, 7 M. & G. 336 ..	367

	PAGE.
Custance v. Bradshaw, 4 Hare, 315 ..	215
Cuthbert v. Dobbin, 1 C. B. 278 ..	415
Dalton v. Hayter, 7 Beav. 250, 313; 31 L. O. 112 ..	243, 244, 555
Daniel, app. Coullating. resp. 8 Scott, N. R. 949 ..	339
— v. Camplin, ib. ..	339
— v. Hill, 31 L. O. 318, 341 ..	557
Davies dem. Lowndes, ten. 1 C. B. 435 ..	415
— v. Price, 31 L. O. 200 ..	555
Davis v. Davis, 4 Hare, 389 ..	557
— v. Prout, 7 Beav. 256, 288 ..	243, 246
Dean v. Hickinbotham, 4 Hare, 302 ..	242
Denton v. Denton, 7 Beav. 388 ..	315
Dewhurst, app. Fielden, resp. 8 Scott, N. R. 1013 ..	339
Dickin v. Edwards, 4 Hare, 273 ..	212
Digby v. Boycott, 4 Hare, 444 ..	526
Doe d. Bacon v. Lady Brydges 6 M. & G. 1034 ..	412
— Earl of Egremont v. Stephens, 2 D. & L. 993 ..	436
— Evans v. Page, 5 Q. B. 767 ..	335
— Jacques v. Roe, 7 M. & G. 347 ..	412
— Jukes v. Sumner, 14 M. & W. 39 ..	335
— Lloyd v. Ingleby, 14 M. & W. 91 ..	411, 435
— Monck v. Geekie, 5 Q. B. 841 ..	362
— Philipps v. Roe, 6 M. & G. 980 ..	412
— Potts v. Jinders, 2 D. & L. 986 ..	437
— Stevenson v. Glover, 1 C. B. 448 ..	361
Dowle v. Luey, 4 Hare, 311 ..	220
Downes v. Garbett, 2 D. & L. 944 ..	414
Durnell v. Corfield, 1 Rob. 51 ..	287
D— v. A— g, 1 Rob. 279 ..	286
Dyer, app. Gough, resp. 8 Scott, N. R. 934 ..	340
Dysart, Earl of, v. Countess of Dysart, 1 Rob. 106 ..	286
Eaton v. Barker, 2 Coll. 124 ..	533
Eckersley, app. Barker, resp. 8 Scott N. R. 899 ..	340
Edmonds v. Peake, 7 Beav. 239 ..	209
Edwards v. Browne, 2 Coll. 100 ..	529
Ellice v. Goodson, 2 Coll. 4 ..	555
Elliot v. Morris, 31 L. O. 199 ..	556
Elliott v. Turner, 13 Sim. 477 ..	209
Ellison v. Cookson, 2 Coll. 52 ..	555
Escott v. Martin, 4 Moore, 104 ..	291
Evans v. Collins, 4 Q. B. 806; 2 D. & L. 989 ..	365, 436
— v. Dublin and Drogheda Railway Company, 14 M. & W. 142; 2 D. & L. 865 ..	339, 414
— v. Evans, 1 Rob. 165 ..	286
— v. Gwyn, 5 Q. B. 844 ..	414
— in re, 31 L. O. 156 ..	576
Exeter, Mayor, &c. v. Warren, 5 Q. B. 773 409 ..	
Faulkner v. Litchfield 1 Rob. 184 ..	286
Feltham v. Clarke, 13 Sim. 491; 31 L. O. 157 ..	246, 558
Fenton v. Clayton, 31 L. O. 271 ..	557
Ferrand v. Wilson, 4 Hare, 368, 369, 385, 385, 386, 384, 344 ..	523, 527, 528
Fisher v. Fisher, 4 Hare, 196 ..	242
— v. Gibbon, 2 D. & L. 869 ..	386
Flight v. Camac, 13 Sim. 413 ..	246
Flintoff v. Haynes, 4 Hare, 309 ..	210, 247
Fordyce v. Brydges, 31 L. O. 94 ..	558
Geach v. Ingall, 14 M. & W. 95 ..	362

	PAGE.
Gedye, in re, 2 D. & L. 915 ..	436
Gee, in re, 2 D. & L. 997 ..	457
Gibson v. Hewett, 31 L. O. 270 ..	537
Gilchrist v. Gilchrist, 31 L. O. 113 ..	537
Goodall v. Polhill, 1 C. B. 233 ..	339
Goodliff v. Fuller, 14 M. & W. 4 ..	410
Goslin v. Corry, 7 M. & G. 342 ..	362
— v. Cotterell, 14 M. & W. 71 ..	415
Grace v. Terrington, 2 Coll. 53 ..	575
Green, in re, 2 Coll. 91 ..	530
— v. Badley, 7 Beav. 271, 274 ..	217, 245
Greenwood v. Rothwell, 7 Beav. 279, 291 ..	243, 246
Gregory v. Duke of Brunswick, 6 M. & G. 953 ..	359
Greville v. Chapman, 5 Q. B. 731 ..	410
Griffith v. Pownall, 13 Sim. 393 ..	215
Grubb v. Perry, 7 Beav. 375 ..	245
Hagger v. Baker, 14 M. & W. 9 ..	435
Haigh v. Jagger, 2 Coll. 231 ..	526
Hamilton v. Watson, 12 C. & F. 109 ..	289
Hammersley v. Baron de Biel, 12 C. & F. 44 288 ..	
Hampshire v. Bradley, 2 Coll. 34 ..	531
Harper v. Philippa, 7 M. & G. 397 ..	415
Harris v. Harris, 4 Hare, 179 ..	214
Harrison v. Harrison, 4 Moore, 96 ..	291
— v. Luke, 14 M. & W. 139 ..	358
Hasleham v. Young, 5 Q. B. 833 ..	437
Hatfield v. Pryme, 2 Coll. 204 ..	533
Hawkyard v. Stocks, 2 D. & L. 936 ..	435
Hayward v. Bennett, 6 M. & G. 1025 ..	384
Hemming v. Dingwall, 31 L. O. 176 ..	535
Henfrey v. Henfrey, 4 Moore, 29 ..	292
Hanson v. Blackwell, 4 Hare, 434 ..	526
Hartford, Marquis of, v. Suisse, 13 Sim. 409; 31 L. O. 57 ..	244, 554
Hawett v. Foster, 7 Beav. 348 ..	218
Hill, Major-Gen. in, goods of, 1 Rob. 275 ..	287
Hilliard, in re, 2 D. & L. 919 ..	437
— v. Webster, 6 M. & G. 983 ..	354
Hilton v. E. Granville, 5 Q. B. 701 ..	363
Hinton, app. Hinton, resp. 8 Scott, N. R. 995 340 ..	
— v. Heather, 14 M. & W. 131 ..	363
Hoare v. Greville, 31 L. O. 271 ..	557
Hodge v. Bird, 6 M. & G. 1020 ..	437
Hodgins v. Hanson, 14 M. & W. 120 368, 414 ..	
Hodgson v. Oakley, 1 Rob. 322 ..	225
Hedkins v. Cook, 8 D. & L. 894 ..	386
Helt v. Dewell, 4 Hare, 446 ..	528
Hood v. Bradbury, 6 M. & G. 981 ..	416
Hoole v. Roberts, 31 L. O. 248 ..	535
Hornby v. Holmes, 4 Hare, 306 ..	246
Horrocks v. Ledam, 2 Coll. 208 ..	575
Horry v. Calder, 31 L. O. 221 ..	558
Hudson v. Fawcett, 7 M. & G. 348 ..	386
— v. Parker, 1 Rob. 14 ..	287
Hughes v. Porral, 4 Moore 41 ..	289, 291
— v. Thomas, 2 Coll. 239 ..	556
Humphreys v. Jones, 14 M. & W. 1 ..	335
Hunter v. Daniel, 4 Hare, 420, 432 ..	524, 532
— v. Hunt, 1 C. B. 300 ..	364
Inge v. Keany, 4 Hare, 452 ..	525
Ismay v. Whitley, 7 Beav. 337 ..	210
— v. Holden, 31 L. O. 157 ..	554
Jack v. McIntyre, 12 C. & F. 151 ..	288
Jackson v. Allaway, 6 M. & G. 942 ..	389
— v. Galloway, 1 C. B. 280 ..	384
Jacobson v. Blake, 6 M. & G. 919 ..	367
Jeffery, app. Kitchener, resp. 8 Scott, N. R. 923 ..	341
Jermey v. Preston, 13 Sim. 356 ..	221

	PAGE.
Johnson v. Evans, 7 M. & G. 240 ..	434
Johnston v. Nicholls, 1 C. B. 231 ..	361
Jones v. Chapman, 14 M. & W. 124; 2 D. & L. 907 ..	385, 389
— v. Griffith, 2 Coll. 207 ..	553
Joseph v. Buxton, 1 C. B. 221 ..	412
Jope v. Pearce, 31 L. O. 368 ..	556
Jumpen v. Pitches, 13 Sim. 327 ..	213
Kavanah v. Gudge, 7 M. & G. 316 ..	390
Kaye v. Wall, 4 Hare, 283; 31 L. O. 33 ..	242, 555
Kerr v. Gillespie, 7 Beav. 269 ..	242, 247
Kielley v. Carson, 4 Moore, 63 ..	290
Kinsela v. Lee, 7 Beav. 300 ..	246
Kipping v. Ash, 1 Rob. 270 ..	287
Knight v. Smith, 6 M. & G. 1016 ..	413
Lackington v. Atherton, 7 M. & G. 360 ..	433
Langford v. Anger, 4 Hare, 313 ..	217
Langston v. Wetherall, 14 M. & W. 104 ..	411
Law v. Law, 2 Coll. 41 ..	554
Leaf v. Topham, 14 M. & W. 146 ..	388
Lee v. Pain, 4 Hare, 216, 255 ..	211, 247
Leeds, D. of, v. Ld. Amherst, 13 Sim. 459 ..	230
Lester v. Archbold, 31 L. O. 416, 534 ..	575
Le Vaux v. Berkeley, 5 Q. B. 836 ..	335
Lidgett v. Williams, 4 Hare, 462 ..	524
Lindon v. Sharp, 6 M. & G. 895 ..	433
Lloyd v. Smith, 13 Sim. 457 ..	244
Lovell v. Blew, 13 Sim. 492; 31 L. O. 156 ..	244, 552
Lund v. Blanchard, 4 Hare, 290 ..	210
Lunn v. Thornton, 1 C. B. 379 ..	358
Lyddon v. Woolcock, 31 L. O. 113 ..	556
M'Alpin v. Gregory, 1 C. B. 299 ..	412
MacDonald v. Mortlock, 2 D. & L. 963 ..	415
Macgregor v. Macgregor, 2 Coll. 194 ..	533
M'Intyre v. Somers, 14 M. & W. 102; 2 D. & L. 896 ..	413
M'Keeverakin v. Cort, 7 Beav. 347 ..	245
Maile v. Bays, 2 D. & L. 964 ..	411
Malins v. Price, 2 Coll. 190 ..	575
Maltass v. Maltass, 1 Rob. 67 ..	286
Manifold, in re, 4 Hare, 308 ..	217
Manton v. Bales, 1 C. B. 444 ..	415
Mason v. Nicholls, 14 M. & W. 118 ..	334
Markath v. Williams, 31 L. O. 318 ..	558
Mather v. Sheldermine, 7 Beav. 267 ..	245
Mauls v. Mounsey, 1 Rob. 40 ..	286
Maylam v. Norris, 1 C. B. 244 ..	359
Medhurst v. Allison, 4 Hare, 479, 480 ..	556, 558
Miller v. Huddlestons, 13 Sim. 467 ..	244
Mills v. Ladbroke, 7 M. & G. 219 ..	360
— v. Goff, 14 M. & W. 72 ..	362
Molesworth v. Howard, 2 Coll. 145 ..	553
Moneypany v. Mascall, 2 Coll. 213 ..	523
Moore v. Darley, 1 C. B. 445 ..	435
— v. Jarvis, 2 Coll. 60 ..	525
Morgan v. Elstob, 4 Hare, 477 ..	575
Morphett in re, 2 D. & L. 967 ..	435
Mummery v. Paul, 1 C. B. 316 ..	388
Munts v. Foster, 6 M. & G. 1017 ..	413
Nelson, Lord, v. Lord Bridport, 31 L. O. 574 ..	574
Newenham v. Pemberton, 1 Coll. 54 ..	553
Newland v. Champion, 2 Coll. 46 ..	554
Newport v. Hardy, 2 D. & L. 921 ..	386
Newton v. Howe, 7 M. & G. 329 ..	412
Nicholls v. Cross, 14 M. & W. 42 ..	362
Nickels v. Huskum, 7 M. & G. 378 ..	364
Nixon v. Few, 7 Beav. 349 ..	243
Oakes v. Strachey, 13 Sim. 414 ..	220

	PAGE.
O'Grady v. Walgram, 31 L. O. 416 ..	556
O'Neill v. Lucas, 31 L. O. 76 ..	556
Parker v. Carter, 4 Hare, 405, 406, 409 ..	524, 553
— v. Dunn, 31 L. O. 56 ..	575
— v. Golding, 13 Sim. 418 ..	212
— v. Great Western Railway Company, 7 M. & G. 253 ..	338
— v. Parker, 31 L. O. 342 ..	554
Peckham v. Gregory, 4 Hare, 396 ..	527
Peddle v. Pratt, 6 M. & G. 950 ..	414
Penfold v. Beach, 4 Hare, 271 ..	217
Percival v. Russell, 7 M. & G. 448 ..	413
Phillips v. Irving, 7 M. & G. 325 ..	367
— v. Phillips, 1 Rob. 144; 8 C. 3 Curt. 796 ..	286
Plarcy, in goods of, 1 Rob. 278 ..	287
Pinnock v. Kernet, 31 L. O. 135 ..	556
Pitcher v. King, 5 Q. B. 758 ..	389
Pitta, app. Smedley, resp. 8 Scott, N. R. 907 ..	339
Player v. Anderson 31 L. O. 463 ..	575
Plenty v. West, 1 Rob. 264 ..	287
Pott v. Todhunter, 2 Coll. 76 ..	532
Potts v. Dutton, 31 L. O. 94 ..	556
— v. Hirst, 6 M. & G. 934 ..	412
Preston v. Leeds, 5 Q. B. 907 ..	337
— v. Dickinson, 31 L. O. 94 ..	558
Prentice v. Phillips, 4 Hare, 484; 31 L. O. 391 ..	553, 557
Pringle v. Crookes, 7 Beav. 237 ..	210
Parves v. Sandell, 12 C. & F. 91 ..	289
Queen v. Bird, 2 D. & L. ..	411
— v. Cattal, 5 Q. B. 901 ..	338
— v. Clark, 5 Q. B. 897 ..	334
— v. Dartmouth, Earl of, 5 Q. B. 878 ..	335, 336
— v. Deighton, 5 Q. B. 896 ..	333
— v. Giles, inhabitants of, 5 Q. B. 1872 ..	337
— v. Gloucester, Mayor of, 5 Q. B. 862 ..	333
— v. Gomperts, 2 D. & L. 1001 ..	386
— v. Leeds, 5 Q. B. 916 ..	337
— v. Morice, 2 D. & L. 952 ..	334
— v. St. Olave's, Southwark, 5 Q. B. 912 ..	337
Radburn v. Jarvis, 7 Beav. 353 ..	245
Raine v. Cairns, 4 Hare, 327 ..	530
Ramne v. Duncombe, 7 M. & G. 425 ..	413
Ranger v. Great Western Railway Company, 13 Sim. 368 ..	243
Reeve v. Rye, 31 L. O. 489 ..	557
Rennie v. Bruce, 2 D. & L. 946 ..	413
Reynolds v. Barford, 7 M. & G. 449 ..	335
Richardson v. Hastings, 7 Beav. 301 ..	214, 244
Rickards v. Attorney-General, 12 C. & F. 30 ..	289
Rigby v. Pinnock, 31 L. O. 415 ..	554
Roberts v. Burder, 2 Coll. 130 ..	534
— ex parte, 6 M. & G. 1049 ..	436
— v. Jones, 7 Beav. 266 ..	244
— v. Roberts, 13 Sim. 336 ..	213
— v. Tunstall, 4 Hare, 257 ..	217
Robinson v. Purday, 4 Hare, 483 ..	555
Robson v. Jonesohn, 7 M. & G. 351 ..	483
Rolleston v. Dixon, 3 D. & L. 892 ..	386
Routledge v. Gibson, 13 Sim. 493 ..	245
Rowlands v. Springett, 14 M. & W. 7 ..	359
Rowley v. Adams, 7 Beav. 396 ..	219
Samuda v. Lonsdale, 7 Beav. 243 ..	215
Score, app. Huggett, resp. 8 Scott, N. R. 919 ..	340
— v. Ford, 7 Beav. 333 ..	218
Service v. Castaneda, 2 Coll. 56 ..	526
Shadbolt v. Woodfall, 2 Coll. 30 ..	525
Shakels v. Richardson, 2 Coll. 31 ..	532, 557
Sharpe v. Hantock, 7 M. & G. 354 ..	334



	PAGE.		PAGE.
Sheffield Railway Co., in re, 31 L. O. 510 ..	557	Vaughan v. Book, 13 Sim. 404 ..	210
Sheldon v. Sheldon, 1 Rob. 81 ..	286	Verulam, Earl of, v. Bathurst, 13 Sim. 374 ..	220
Sheppard v. Wilson, 4 Hare, 395 ..	524	Vivian v. Cechrane, 4 Hare, 167 ..	217
Simons v. Lloyd, 2 D. & L. 961 ..	404		
Singleton v. Cox, 4 Hare, 326 ..	243	Wadley v. Wadley, 2 Coll. 11 ..	524
Sinister's Patent, in re, 4 Moore, 164 ..	293	Waite v. Gale, 2 D. & L. 925 ..	410
Skrine v. Powell, 31 L. O. 175 ..	575	Walford v. Pemberton, 13 Sim. 441 ..	243
Sleggett v. Collins, 13 Sim. 456 ..	243	Walker v. Hurst, 13 Sim. 490 ..	244
Smallman v. Pollard, 6 M. & G. 1001 ..	341	—— v. Parkins, 2 D. & L. 962 ..	413
Smart v. Nokes, 6 M. & G. 911 ..	408	Welcher v. Mene, 2 D. & L. 961 ..	436
Smith v. Earl of Easingham, 7 Beav. 367 ..	219	Walton v. Chandler, 1 C. B. 306 ..	415
—— v. Gould, 4 Moore, 21 ..	292	Wansay v. Overseers of St. Peter-le-Poor, resp. 8 Scott, N. R. 998 ..	340
—— v. Harris, 1 Rob. 268 ..	287	—— app. Perkins, resp. 8 Scott, N. R. 970 ..	339
—— v. Moore, 1 C. B. 438 ..	365	Warner v. Platell, 31 L. O. 76 ..	556
Spencer v. Allen, 4 Hare, 465 ..	556	Warren v. Postlethwaite, 2 Coll. 116 ..	527
Stamford, Earl of, v. Dunbar, 14 M. & W. 151 ..	341	Watson v. Bodell, 14 M. & W. 57 ..	434
Stanley v. Bond, 7 Beav. 386 ..	246	—— v. Coleman, 7 M. & G. 422 ..	436
Steele v. Harmer, 14 M. & W. 136 ..	385	Watts v. Lyons, 6 M. & G. 1047 ..	411
Stevens v. Stevens, 2 Coll. 20 ..	531	Way v. Campbell, 6 M. & G. 1046 ..	412
Stillwell v. Blair, 13 Sim. 399 ..	245	Webb v. Beavan, 6 M. & G. 1055 ..	389
Stone v. Greening, 13 Sim. 390 ..	220	—— in re, 2 D. & L. 932 ..	437
—— v. Stone, 1 Rob. 99 ..	286	Webster v. Barnes, 31 L. O. 249 ..	558
Stroud v. Stroud, 7 M. & G. 417 ..	363	Wells, Dean and Chapter of, v. Doddington, 2 Coll. 73 ..	527
Stuart v. Lord Buta, 13 Sim. 453 ..	246	West v. Cooke, 1 C. B. 312 ..	436
—— v. Isomonger, 4 Moore, 11 ..	292	—— v. Steward, 14 M. & W. 47 ..	360
Swallow v. Day, 2 Coll. 133, 135 ..	558	Whitmore v. Sloan, 31 L. O. 199 ..	556
		Whitworth v. Whitworth, 31 L. O. 200 ..	555
Tanner v. Scovell, 4 M. & W. 28 ..	367	Wiles v. Cooper, 31 L. O. 292 ..	576
Thomas v. Hudson, 2 D. & L. 673 ..	534	Wilkins v. Bromhead, 6 M. & G. 963 ..	434
—— v. Small, 1 C. B. 326 ..	366	Wilkin v. Nainby, 4 Hare, 473, 476 ..	555, 556
Thompson v. Advocate-Gen. 12 O. & F. 1 290 ..	290	Wilkinson, ex parte, in re Alcock, 2 Coll. 92 ..	576
—— v. Cooper, 2 Coll. 87 ..	575	—— v. Page, 6 M. & G. 1012 ..	389, 487
—— v. Spiers, 13 Sim. 469 ..	213	Williams v. Burrell, 1 C. B. 402 ..	560
—— v. Thompson, 7 Beav. 350 ..	244	—— v. Edwards, 2 Coll. 176 ..	533
Thorpe v. Harvey, 31 L. O. 156 ..	358	—— v. Tarrt, 2 Coll. 85 ..	532
Titchmarsh v. Chapman, 1 Rob. 175, 8. C.; 3 Curt. 703, 840 ..	285	Wimbourne Union v. Masson, 7 Beav. 309 ..	243
Todd v. London and South Western Railway Company, 7 M. & G. 346 ..	337	Wing v. Wing, 31 L. O. 390 ..	556
Toma, app. Cumming, resp. 8 Scott, N. R. 910 ..	340	Winnall v. Featherstonehaugh, 31 L. O. 199 ..	554
Topham v. Lighthody, 4 Hare, 318 ..	244	Wood v. Duke of Argyll, 6 M. & G. 928 ..	335
Trull v. Kibblewhite, 31 L. O. 390 ..	574	—— v. Wedgwood, 1 C. B. 273 ..	390
Trent v. Harrison, 2 D. & L. 941 ..	436	Woodcock, in re, 1 C. B. 437 ..	412
Trotter v. Walmsley, 7 Beav. 264 ..	246	Wooll v. Townley, 31 L. O. 247 ..	556
Tubby v. Tubby, 2 Coll. 136 ..	553		
Tuck v. Raymond, 31 L. O. 175 ..	558	York v. White, 31 L. O. 463 ..	555
Turner v. Lamb, 2 D. & L. 871 ..	386	Young v. Hopley, 31 L. O. 416 ..	556
—— v. Mason, 14 M. & W. 112 ..	387	—— v. Macintosh, 13 Sim. 445 ..	213
		—— v. Quinsey, 31 L. O. 318 ..	555

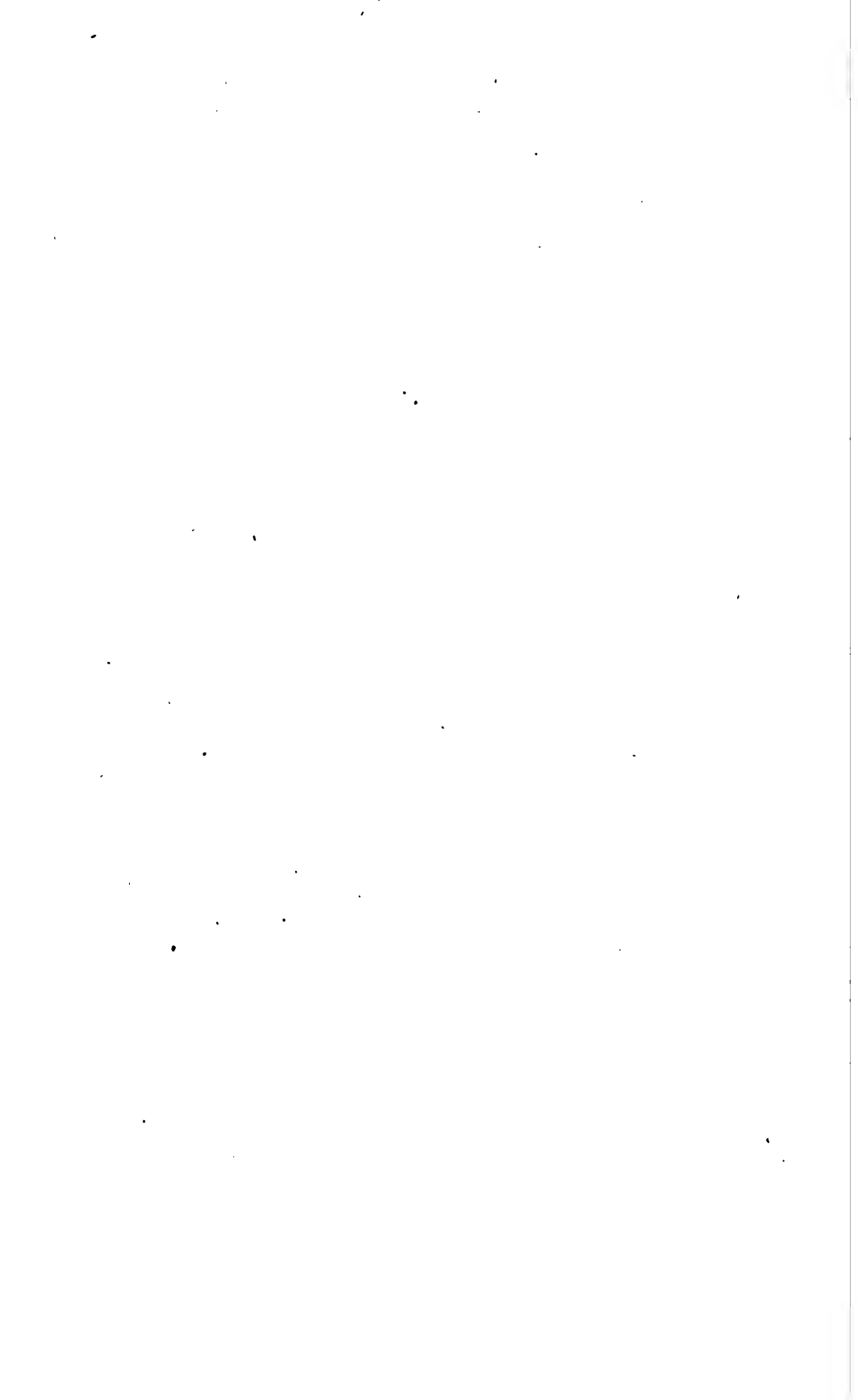
# GENERAL INDEX TO VOLUME XXXI.

Beckett's Comic Blackstone, 196  
 accountant-General's Office, 356  
 admiralty Appeal Cases, Digest of, 291  
 affidavit, trial of facts by, 147  
 iteration of Bills of Exchange, &c., 148  
 iterations projected in the law, 1  
 analytical Digest of Cases in all the Courts, see  
   *Digest*  
 antiquities, legal,  
 annuity, property charged with, 329  
 appeal cases, Digest of, 287  
 arbitration cases digested, 433  
 assignment of Terms' Act, lectures on, 81, 101,  
   122, 179  
   *legacy*, 518  
 attorneys' certificates, renewal of, 32, 52, 110, 155,  
   241  
   of two courts, suable in either, 26  
   admissions, 52, 71, 241, 283, 314  
   binding partner, 282  
   striking off roll, 90, 135  
   remedy for costs, 147  
   responsibility of, 173  
   liability to militia, 399  
   action on note in discharge of costs, 424  
   law of, digested cases, 436  
   certificate duty, 485  
 auctions, puffing at, 127  
 banker's note, partners' liability, 257  
 bankruptcy cases digested, 433  
   dividends declared, 40, 139, 203, 371, 395  
   and insolvency amendment, 148, 569  
   court fees, 88  
   jurisdiction as to costs, 234  
   power of committal, 234  
   sittings, 348  
   compulsory, 541  
 bankruptcies superseded, 99, 178, 297  
 bankrupts, 99, 119, 178, 297  
   evidence when admissible, 126  
   interest accruing after, 424  
   and insolvency, effect of, in Scotland,  
     519  
 barristers called, 197, 331  
   clerk's gratuities, 198, 259  
 Benchers and Queen's counsel, 155, 233  
 Bills in Parliament, see *Contents*  
   of exchange, unstamped, when receivable in  
     evidence, 125  
   alteration of, 143  
   law of Scotland, 431, 460, 478, 499  
   of sale, operation on after acquired property, 207  
 Bigg's Special Railway Act, 502  
 Brougham's (Lord) Short Form Bill, 517  
 Browell's Real Property Statutes, 474  
 Campbell's (Lord) Lives of Chancellors, 146  
 Candidates passed, 239, 407  
 Chancery sittings, 17, 97, 117, 203, 224, 321, 515, 587  
   cause lists, 18, 37, 118, 225, 252, 345, 537  
   time table, 27, 49  
   returns to parliament, 378, 406  
   remedial jurisdiction of court of, 23  
   orders, estates drainage, 487  
 Champerty, law of, 422  
 Charitable Trusts' Bill, 421, 452, 462, 560, 568  
   Bequests Bill, 353  
 Change of ministry and law officers, 141  
 Chattels, when property passes, 187  
 Circuits of the judges, 324  
   insolvent debtors' commissioners, 422

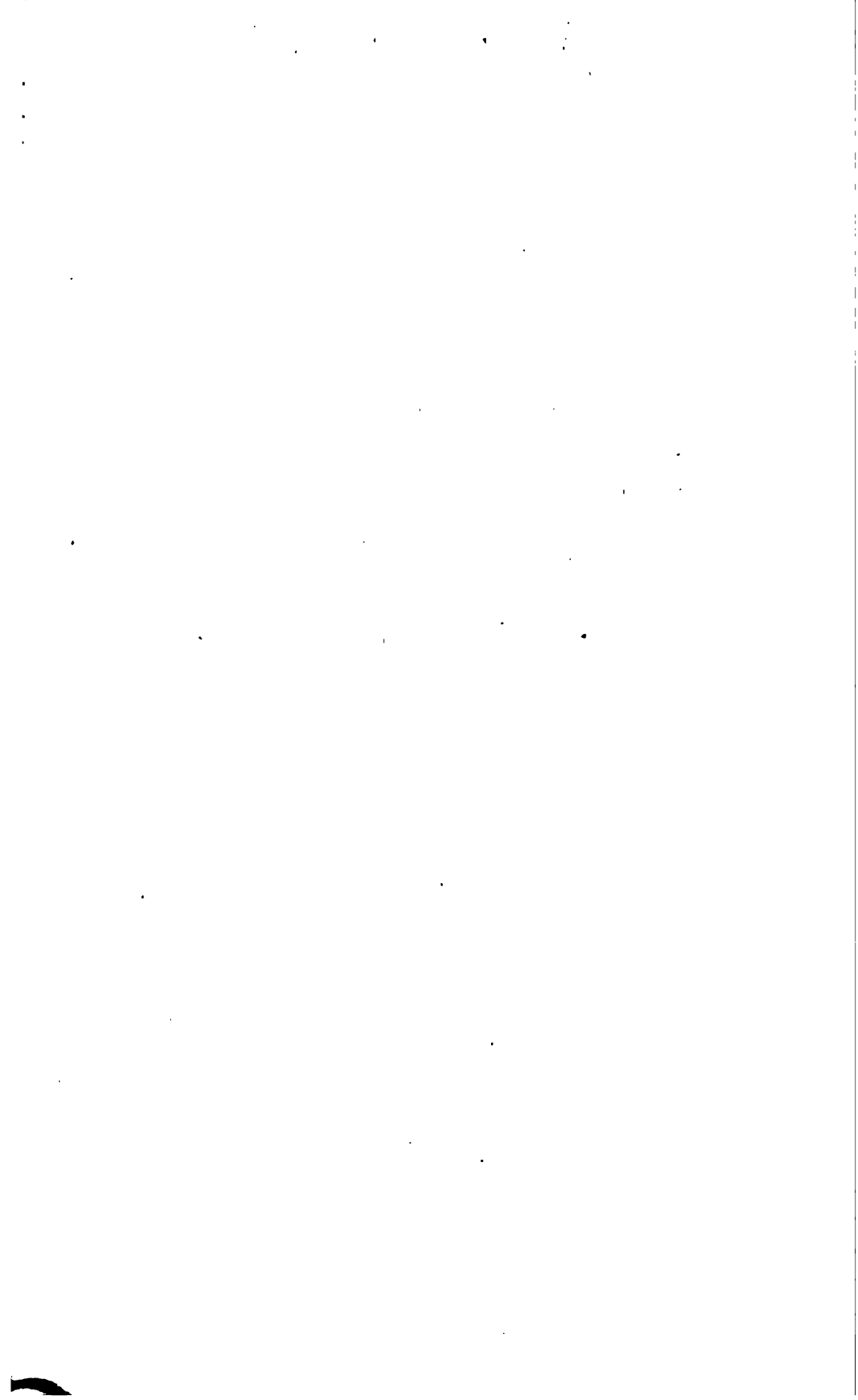
Clerks of the peace, fees of, 331  
 Common law cause lists, 20, 38, 226, 252, 559  
   sittings, 80, 98, 203, 226, 324, 348,  
     443, 516  
   digest of cases, 333, 558, 582, 408, 433  
 Commons Inclosure Act, 41, 63  
 Conveyance Act, lecture on, 162  
   reform, 565  
 Contingent remainders, 112  
 Constables and Jurors Bill, 311  
 Copyright in books published abroad, 104  
 Corporation frauds, 23  
 Correspondence, see *Contents*  
 Coroners' expenses, 508  
 Costs in bankruptcy, 234  
   digest of cases, 247, 436  
   of new trial, 330  
 Courts, state of business in, 31  
   of common law, business arrangements, 325  
 Crabb's Law of Real Property, 425  
 Creditors' suit, 567  
 Criminal law report, 129  
   appeals and new trials, 301  
   Justice Bill, 377  
 Davidson's Concise Precedents, 456  
 Debts, small, practitioners, 51  
 Debtors and Creditors Arrangement Act, 373  
 De Bode's (Baron) case, 189, 236  
 Decisions in the Superior Courts, see *each Number*  
   under the Small Debts Act, 4, 51, 73, 111  
 Depositions on criminal charge, copies of, 11  
 Digest of cases, reported in all the courts, 209, 242,  
   333, 358, 408, 433, 523, 552  
 Dividends in bankruptcy declared, see *Contents*  
 Drainage of estates, Chancery orders, 427  
 Dublin Law Institute, examination and prizes, 508  
 Easter vacation, order of court, 491  
 Ecclesiastical courts, digest of cases, 285  
 Editor's Letter Box, end of *each Number*  
 Education, legal, 264  
 Ejectment practice, grievance in, 165  
 Elections, mode of conducting, 404  
   in Counties Bill, 506  
 Equitable mortgage, 44  
 Equity, notes on, see *Contents*  
   jurisdiction, origin and progress of, 66, 105  
   digest of cases, 209, 242, 523  
 Error on interpleader issue, 46  
 Evidence by unstamped bill, 125  
   digest of cases on, 408  
 Examination, information relating to, 15, 56, 228,  
   250, 263, 536  
   questions, 74, 312  
   candidates passed, 239, 407  
   prizes suggested, 379, 431  
 Examiners, appointment of, in Russia, 328  
 Executor's assent, when unconditional, 518  
 Expectancies, sale of—inadequacy of price, 447  
 Fees of Bankruptcy Court, 88  
   clerks of the peace, 331  
 Feoffment stamp, 111  
 Friendly Society's Bill, 402  
 Game Law Amendment Bill, 354  
 Grant's Chancery Practice, 66  
 Hackney coach licences, 423  
 Highways Bill, 547  
 Holidays at the law offices, 198  
 Imprisonment, what constitutes, 470  
 Inclosure of Commons Act, 41, 63  
   commons report, 565

- Incorporated Law Society Prospectus, 169  
 Information at the suit of relators, 332  
 Influence over donor, 87  
 Inns of court, proposed lectures, 264, 372  
     studying for bar, 405  
     revival of readings, 445, 496  
     regulations, 480  
 Insolvency jurisdiction, 467  
 Insolvent Debtors Act, construction of schedule, 498  
 Insurance without interest, 494  
 International law, 236  
 Interpleader issue, 46  
 Issue from Chancery, 519  
 Joint-stock companies, winding up, 231  
 Judges' Chambers, arrangement of business, 420  
 Judicial business in the House of Lords, 121, 349  
 Kennedy's Code of Chancery Practice, 12  
 King's case, 90  
 Lading bill, action on, 544  
 Landlord and tenant, quitting for want of repair, 450  
 Law Amendment Society, 29  
     officers, change of, 141, 174  
     appointments, 15, 19, 112, 152  
 Leases Act, lecture on, 162  
 Lectures, law, on Real Property Amendment Act, 183, 255, 280, 305  
     Assignment of Terms' Act, 81, 101, 122, 179  
     Conveyancing and Leases Act, 162  
 Legacy duties, 27  
     assignment of, 518  
 Legislation in real property, 173  
     railways, 229  
 License to enter on land, 9  
 Limitation Act, not retrospective, 310  
 Lords, judicial business in House of, 121, 349  
 Ludlow charity case, 372  
 Lunatic, where permitted to reside, 30  
 Lunatics' Regulation Act, 84, 106  
 Manchester Law Association, 266  
 Manorial rents, 268  
 Marriage, law of, 48, 76, 109  
 Masters extra. in Chancery, 98, 178, 296, 395, 492, 580  
 Martel's trial, 486  
 Memoir of Mr. Justice Story, 260  
 Metropolis Buildings Bill, 426  
 Miller's Chancery Orders, 168  
 Mortgage, equitable, 44  
     on after acquired property, 207  
 Municipal corporations, equitable jurisdiction, 309  
 New trial costs, 330  
 Notes of the week, *passim*  
 November, first of, 14  
 Obituary, legal, 156, 174, 300, 394, 564  
 Orders and disposition of bankrupt, 278  
 Outstanding Terms' Act, 32  
 Paper books, time for delivery, 208  
 Parliamentary practice in railways, 161, 181  
     taxes in a lease, 47  
     returns, see *Contents*  
     proceedings relating to the law, see *each Number during the session*  
 Partnership with pawnbroker, 376  
 Partnerships dissolved, 99, 178, 297, 395, 492, 580  
 Patent, extension of, of, 292  
 Peers of the realm, 49  
 Perpetual commissioners, 174, 394  
 Pirates' case, 134  
 Pleadings in equity, digest of cases, 242  
     common law, digest of cases, 382  
 Policy of assurance, 278  
 Points in common law, see *Contents*  
 Poor Removal Bill, 111, 134, 493, 534  
 Practice in equity, digest of cases, 244  
     common law cases digested, 411  
 Principles of equity, digest of, 209, 523  
     common law, 358  
 Privileged person, arrest of, 25  
 Professional character and conduct, 30  
     remuneration, 565  
 Promotions and appointments, 15, 91, 112, 152, 155, 263, 394  
 Property in chattels, when passing, 187  
 Provincial Law Society's Association, 238  
 Prosecutors' and Witnesses' Bill, 472  
 Prospects of the session, 205  
 Puffing at sales by auction, 127  
 Pyke's case, 91  
 Queen's counsel and benchers, 155  
 Questions at the examination, 74, 312  
 Railway liabilities of provisional committees, 52, 172, 263, 420  
     companies' charges as carriers, 61  
     registration, liability of solicitor, 135  
     legislation, 229  
     parliamentary practice, 161, 181  
     law relating to, 166  
     provisional committee liabilities, 172  
     share allottees, liability of, 491  
 Real property legislation, 173, 356  
     Amendment Act, lecture on, 183, 255, 280, 305  
 Receipt stamps, 327  
 Reform of the law, see *Contents*  
 Registry of deeds, 357, 397, 458  
 Relator's information, 232  
 Removal of Poor Bill, 111, 134, 473, 493, 534  
 Removal of the courts, plan of proposed site, 5, 491  
 Remainders, contingent, 112  
 Replevin bond, 545  
 Retainers, practice of, 110  
 Reviews: see *Contents*  
     Roman Catholics' Relief Bill, 402  
 Rouse's Practical Man, 194  
 Sale of expectancies, 447  
 Sales by auction, puffing, 127  
 Scottish Mercantile Law and Practice, 431, 460, 478, 499, 519, 545  
 Sheriff's liability for arresting privileged persons, 23  
     undersheriffs, &c., 380  
 Shelford's Law of Railways, 400  
 Small Debts' Act, decisions, 4  
 Smith, J. W., Esq., 174  
 Solicitor and client, purchase, 8  
 Solicitors' accounts and arrangement of papers, 132  
     canvassing for railway litigation, 266  
 Stamp Act, legacy duties, 27  
     on note and agreement, 399  
     on fees, 111  
     receipts, 327, 398  
 Statutes, construction of, digest of cases, 333  
 Stephen's Commentaries, 144  
 Stewart's Practice of Conveyancing, 565  
 Story, Mr. Justice, memoir of, 260  
 Suspension of law reform, 277  
 Tamlyn's Evidence in Chancery, 571  
 Taxing master in bankruptcy, 15  
 Teesdale, John, Esq., 175  
 Terrell's Railway Liabilities, 504  
 Time Table in Chancery, 27, 49  
 Trials, remarkable foreign, 486  
 Transfer of railway shares, 135  
 Turnley's Spirit of the Vatican, 193  
 Twyford, Mr., the police magistrate, 467  
 Unqualified practitioners under Poor Law Bill, 531  
 Voluntary settlement, 543  
 Walford's Laws of the Customs, 376  
 Ward of court, 44  
 Westminster Hall, "the two sides" of, 267  
 Whiting's Case, 372  
 Winding-up joint-stock companies, 231









## BASEMENT

LEGAL OBSERVER

Volume: 31

Copy:

PL  
LJ  
MG

[illegible]



